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ABSTRACT

Literature review, questionnaire survey, and personal interviews were the primary methods of gathering information about the educational opportunities available to Hispanic migrant students needing bilingual instruction. Four major findings were supported: (1) the number and percentage of Hispanic migrant students attending segregated schools is increasing due to the segregation of Hispanic students generally and the failure to identify "migrancy" per se as an illegal basis for discrimination; (2) although bilingual education is a matter of civil rights (Lau v. Nichols), few non-English-speaking or limited English-speaking migrants receive appropriate language instruction; (3) educational statistics, e.g., under enrollment and high dropout rates, document the exclusion of the migrant student from the public school system; (4) even when Hispanic students are served in a desegrated, bilingual setting, there are no clear legal obligations to ensure that Hispanic migrants receive a desegrated, bilingual education. Full educational equity for the Hispanic migrant student demands comprehensive educational reform including national legislation to protect the migrant's access to a public education. Survey forms, chronology of key court decisions, bibliography, and other supporting documents are appended. (JH)

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THE INTERFACE BETWEEN DESEGREGATION & BILINGUAL EDUCATION AS IT AFFECTS HISPANIC MIGRANT CHILDREN

NIE CONTRACT NO.
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JUNE 1979

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Chief Justice Warren, Brown v. Topeka Board of Education, 347 U.S. 230 (1954)

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I. INTRODUCTION

Between October 1978 and June 1979 the Association of Farmworker Opportunity Programs (AFOP) conducted an exploratory study for the Desegregation Studies team of the National Institute of Education. The study was designed to assess the relationship between the Hispanic migrant child and the equal educational opportunities offered by desegregated/bilingual education.

Two research foci were identified:

- To what extent are the children of Hispanic migrant farmworkers (MFWs) of limited English-speaking (LES) ability[1] currently being served by bilingual education programs and desegregation plans at the elementary school level. More specifically, the impact of school desegregation and bilingual programs on MFW students, and whether bilingual programs cause the segregation of migrant children; and,

- Whether the current status of such programs serving these students is sufficient under the Lau and Brown decisions, e.g., are there any successful remedies and innovative program approaches?

With the common understanding that the Hispanic proportion of America's migrant student population has been steadily increasing,[2] the AFOP project sought to identify the equal educational opportunity implications of this increase in LES migrant students, discuss unresolved questions and make recommendations. In addition, the study sought to present the matrix of educational issues and their implications in a comprehensive format for distribution to concerned individuals and groups.

The relatively short time span of the project (originally six months, later expanded to nine) led to the utilization of three primary methodologies: a literature review (Appendix H), questionnaire survey (Appendix F) and personal interviews (Appendix G). Information also was solicited by AFOP through an article appearing in the November 1978 issue of The Migrant Educator (Appendix B).

Originally the project planned for on-site observations of school districts in which the migrant student population is being served by a bilingual education program and desegregation plan at the elementary school level; however, no site was located which fit these criteria until the seventh month of this nine month project. Consequently, the on-site reviews did not materialize and the study placed a heavier emphasis on the literature review, survey results and interviews.

A search of 234 documents failed to identify literature directly pertinent to the study's foci. In general the materials focus on bilingual programs, school desegregation,[3] or the categorical migrant education

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[1] Definition is discussed in FINDING 2: BILINGUAL EDUCATION.

[2] Vidal Rivera, Chief of Migrant Education Branch, Title I MEP, Office of Education, interview held in Washington, D.C., November 1978.

[3] The vast majority of the documents still review school desegregation in Black/White terms and fail to discuss the segregation of Hispanics and other identifiable ethnic minorities.

programs. In a relatively few instances, bilingual education and desegregation are explored in conjunction; however, the equal educational opportunity needs of migrants are not identified within the context of either the bilingual programs or the desegregation plans of the public school system.[4] Meeting the equal educational opportunity needs of migrant students is generally viewed as a migrant education program responsibility. This tendency to place responsibility for meeting migrant needs on categorical migrant programs was reiterated in the information elicited by the survey and personal interviews. In short, each of the methodologies failed to elicit information which would bear directly on an adequate assessment of the interface between desegregation and bilingual education as it affects Hispanic migrants. Instead, they identified the void in available data and information relating to the equal educational opportunity of migrant students. Consequently, the AFOP project was left with the task of articulating these undefined and unassessed equal educational opportunity needs of migrant children; one of the most educationally disadvantaged groups in our society.[5]

The educational statistics which are available document that Hispanic migrant students are not realizing their potential within the public school system and, thus, indicate that there are educational needs which remain unidentified or merely unserved. Whatever the conclusion, migrants do not create the problem. Rather, as a marginalized group within modern industrial society, they epitomize the matrix of issues affecting the disenfranchised. Consequently, examination of their unmet educational needs reveals problems and unresolved issues whose repercussions spread beyond the confines of the migrant population.

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[4]With the exception of Arnow's work and reviews of the categorical migrant education programs.

[5]President's Commission on Mental Health, Task Panel Reports Submitted to the President's Commission on Mental Health 3, Appendix (Washington, D.C.: U.S. Government Printing Office, 1978), p. 1224.

II. THE AMERICAN HISPANIC MIGRANT FARMWORKER

In order to understand the equal educational opportunity needs of migrant children, first, a description of the status of the migrant population is needed so that the unique characteristics of the population can be understood. Second, it is necessary to define and discuss the dimensions of equal educational opportunity, particularly as applied to the MFW child. Finally, it is necessary to examine the relationship between the two.

Hispanic migrant agricultural workers[6] and their dependents do not receive services generally available to the American public. They live and work under deplorable conditions.[7] Within modern American industrial society they constitute a diverse and viable community, but a group marginalized by its mobility, rurality, poverty, racial/ethnic origin, occupation and cultural/linguistic heritage.

Although agribusiness and the rest of the country depend on these workers for their critical contribution to food production, migrant agricultural workers remain an unappreciated and unknown population. There is a critical shortage of demographic and socioeconomic data available on migrant/seasonal farmworkers. Estimates from different federal agencies for these populations range from 1.5 to 6 million, pointing to an "intelligent guess" of approximately 5 million workers and dependents.[8] These numbers are increasing.[9] Further, the percentage of migrant versus seasonal workers is not known.

No reliable national statistics are kept concerning the ethnic/racial origins of this labor force. However, at least 55% is estimated by the Department of Labor (DOL) to be of Hispanic origin and that percentage is increasing.[10] This Hispanic population includes Mexican-Americans,[11]

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[6]For the purposes of this report:

- A migrant agricultural worker shall mean a person who performs agricultural labor which requires travel such that the worker is unable to return to the usual place of residence within the same day; or if there is no usual place of residence, the worker takes up temporary overnight residence for the sake of performing agricultural labor; and,
- A seasonal agricultural worker is someone who has been primarily employed in agriculture on a seasonal basis, that is, not with a constant year-round regular salary. This definition would include those who are/were employed continuously throughout the year but at different daily or weekly rates, those who are/were "on call" throughout the year, sharecroppers, tenant farmers, those paid by the piece, the seasonally unemployed and the seasonally underemployed.

The definitions of "migrant" and "seasonal" workers vary. The definitions cited above are those recommended by AFOP in its exhaustive review of the varying federal agencies' definitions, Toward an Equitable CETA 303 Allocation Formula for Farmworkers (Raleigh, N.C.: A.F.O.P., July 1978).

Appendix A of The Interface Between Desegregation and Bilingual Education As It Affects Hispanic Migrant Children outlines the definitions used in the Title I Migrant Education Program (MEP). For the Title I MEP, migrancy involves "moving from one school district or administrative district to another." In concurrence with the MEP, this study is concerned with the educational needs of migrant children who move from one school district to another and considers this an appropriate indicator of educational disruption.

[7]Excluded from most labor protective laws, migrants work 9 to 12 hours per day with 60% earning less than $3000 a year. Forty percent live in substandard housing and the population as a whole has a life expectancy 20 years less than the average American. Also, the infant and maternal mortality rate among the migrant population is 2 1/2 times the national average. U.S. Department of Labor, Employment and Training Administration, Migrant and Seasonal Farmworker Programs (Washington, D.C., 1978), p. 2.

[8]President's Commission on Mental Health, p. 1202.

[9]InterAmerica Research Associates, An Assessment of the Migrant and Seasonal Farmworker Situation in the United States, Vol. II: Findings (Washington, D.C., May 1976), p. 30.

[10]U.S. Dept. of Labor, Employment and Training Administration (ETA), p. 2.

[11]"Chicano" and "Mexican-American" will be used interchangeably in this report.

Puerto Ricans, Cuban-Americans, Mexican Nationals and Latin Americans. The migrant population is diversified further by the presence of substantial numbers of American Blacks, in addition to Whites, Filipinos, West Indians, Native Americans, Native Canadians, Punjabis (East Indians), Ukranians and an increasing number of Vietnamese.

The lack of reliable data reflects the exclusion of migrant workers from the mainstream of American society, and may explain the limited participation of MFWs in public services. For example, less than 10% of the farmworker population receive any public assistance in spite of the fact that the vast majority are qualified on the basis of income alone.[12] Factors which contribute to the low participation of MFWs in public services include poor community response (exemplified by no outreach or bilingual services), discrimination and legislative provisions (such as residency requirements, waiting periods and conflicting definitions of "migrant worker"), as well as the workers' mobility and isolation.

In addition to MFWs' limited access to public services, the approximately one million migrant children also confront barriers to public education. The families' movements, necessitated by their occupation, may result in a migrant child's attendance at as many as five different schools within one year.[13] School attendance rates of migrant children are commonly acknowledged to be low, although no quantification of the problem has been made.[14] Compulsory school attendance laws often exempt migrant children.[15] School attendance also may be sporadic or curtailed by the need for school-age children to supplement their families' income by working in the fields. Child labor laws remain mainly unenforced. In addition:

> Some children both work and go to school, which makes for a long, tiring day and makes absorption of academic materials difficult. Another major barrier to attendance is the necessity of older children to care for their younger siblings where day care services are not prevalent. There have also been many instances reported of migrant children being sent home because they were not wearing appropriate clothing, or not attending school because there were not enough shoes or underwear for everyone in the family. Additional expenses incurred for transportation, if it can be provided, and fees for special classes, gym clothes, books or extracurricular activities can make the cost of attending school prohibitive for any poor person. Illness of course, further reduces the amount of time migrant children spent in school. And the poverty of most families, with the resulting poor nutrition, make migrant children more susceptible to childhood illnesses.[16]

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[12] U.S. Dept. of Labor, ETA, p. 2.

[13] National Association of Farmworker Organizations (NAFO), The American Farmworker: A Report to the Nation. Vol. II: Report of the Issues (Washington, D.C.: NAFO, 1976/1977), p. 87.

[14] Rivera Interview.

[15] Discussed further in the subsection Uncertain Responsibilities of the Public School System of FINDING 3.

[16] Sandra McClure Porteous, Migrant Child Welfare: A Review of the Literature and Legislation (Washington, D.C.: InterAmerica Research Associates, March 1977), pp. 81-82.

When migrants do attend school, it is usually in rural areas.[17] Rural areas have limited educational resources.[18] This results in lower teacher salaries, limited facilities and materials, restricted curricula and a lack of counseling services.

Hispanic migrant children, in particular, fare poorly within this matrix of barriers to education. Studies indicate that when comparisons are made among Black, Hispanic and White migrant students, the Hispanic students appear most disadvantaged. They draw a distinctively poor profile of malnutrition; a profile characterized by low heights for age and overweight for height stemming from a vitamin and protein poor diet rich in carbohydrates.[19] In addition, Hispanic migrant students experience the following:

- Lowest age of entry into the agricultural migrant labor force;
- Lowest expectation of leaving the migrant agricultural field;
- Highest school absenteeism rate;
- Most repetition of a grade;[20]
- Lowest self-concept;[21]
- Most problems with the English language; and
- Lower achievement levels than either Black or White migrant students, who also complete approximately 3 more years of education than the Hispanic migrant.[22]

Studies note, however, that the social class differences are far more numerous and of greater magnitude than any of the ethnic group constrasts. The poverty experienced by migrants produces a profound and progressively negative effect on scholastic achievement which is independent of ethnic group membership.[23]

Federal and state administrative/legislative bodies have directed public funding to categorical migrant education programs in attempts to equalize educational opportunities for migrants. In addition, migrants who are of LES ability and/or a member of a racial/ethnic minority are one segment of a larger minority and LES student body, and, as members of

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[17] Ibid., p. 83.

[18] Rural school children represent 32% of all enrolled school children, ages 5-17. They are consistently discriminated against by the Federal government. Federal outlays for 1973 show that rural areas received only 11% of library and materials funds, 13% of basic vocational aid, 8% of migrant education aid, 20% of bilingual education funds, and 25% of Educational Opportunity Grant Program funds. Add to that, the unavailability to rural children of some national programs, such as those for the handicapped and gifted children, and the case is even clearer. Rural America, Platform for Rural America: Revised at the Third National Conference on Rural America (Washington, D.C., December 5-7, 1977), p. 45.

[19] Edward Klumpp et al., Educational Needs Assessment for the Children of Florida's Migratory Agricultural Workers, Vol. I, Executive Summary: A Summary of Findings and Recommendations (D.A. Lewis Associates, Inc., 1976), p. 59.

[20] One review found that the number of Hispanic migrants who must repeat the first grade is as high as 80%. Fred Diaz, "The Thousand Indignities of a Spanish-Speaking Student," Washington Education 82 (May-June 1971), p. 20.

[21] However, Hispanics are more likely to be rated as having a healthy personality than either their White or Black migrant peers. Klumpp, p. 58.

[22] Ibid., pp. 45, 53, 55, 60-63.

[23] Ibid., p. 54.

the larger student body, are entitled to the language programs and desegregated school settings which have been defined by judicial, administrative and legislative bodies as the equal educational opportunity rights of all LES and minority students.[24]

Although 55% of the agricultural labor force is Hispanic, due to a larger and younger family, over 80% of the migrant children are Hispanic.[25] The Hispanic segment of the migrant farmworker population is increasing, so the corresponding increase in the total number of migrant students and in the percentage of Hispanic students is expected to continue.[26] Once they are in school, these students' educational needs are influenced by their bilingual/bicultural heritage in addition to their poverty. As part of the minority, LES and migrant student body, Hispanic migrants are eligible for numerous educational services. Which raises the question: Why, despite substantial public funding of equal educational opportunity programs, does a large body of evidence point to only marginal educational gains among these children?[27]

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[24]Definition and discussion of these equal educational opportunity rights follows.

[25]Pilar Saavedra-Vela, "Getting an Education on the Road," Agenda, May-June 1978, p. 9.

[26]Klumpp, p. 63.

[27]President's Commission, p. 1224.

III. EQUAL EDUCATIONAL OPPORTUNITY

A basic assumption of the public educational system is that it is an equalizer; a mechanism in the social machinery which ensures equal opportunity for all. Further, it is assumed that the American educational system will create equal economic opportunity by providing equal educational opportunities.

> Public policy attempts to improve the "life chances" of youngsters from low income and minority backgrounds have focused primarily on the schools. "Life chances" is defined as a child's future ability as an adult to participate fully in the social, economic, and political life of society. More narrowly, "life chances" may be considered in terms of such outcomes as ultimate earnings, occupational status, and political efficacy. The crucial role of the school in preparing students for these eventualities has been tacitly assumed.[28]

However, the promise of equal opportunity has not been fulfilled. The causes behind this failure are complex and can be related to such factors as the students' psychology, culture, language, poverty and racial/ethnic identity. As a result, the public, the policy makers and the courts have been impelled to develop and support reforms of the educational system. These reforms have focused on three major issues: school desegregation, reform of state educational finance systems, and the provision of supplemental resources for educationally "disadvantaged" children.

The common bond between desegregation concerns and supplemental resources for the "disadvantaged" (such as bilingual education) is definition of unequal educational opportunity as one of unequal access; the physically inequitable access of segregated schools and the intellectually inequitable access of English-only instruction for LES students. Hispanic migrant children fall under both categories of students denied equal access; those segregated by racial/ethnic origin and those excluded by language.

The following discussion reviews the history and current status of bilingual education and school desegregation with an emphasis on the unequal access of Hispanic children, particularly those from the states of California, Texas and Florida. This emphasis is necessary because, unfortunately, no document or data exists to place the migrant student within the scope of these issues.[29] The Hispanic student population of these three states is one for which information, albeit limited, is available, and which most closely parallels the ethnic and linguistic characteristics of the Hispanic migrant student. In addition, the three states cited

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[28] Henry M. Levin, "Education, Life Changes, and the Courts: The Role of Social Science Evidence," Law and Contemporary Problems 39 (Spring, 1975), p. 217.

[29] Outside the reviews done of the categorical migrant education programs.

are those in which migrant workers are "homebased;"[30] that is, they stay there for 5-9 months to do agricultural work and then travel the labor stream for the remainder of each year to work the crops of the 45 "upstream" states.[31]

Historical Background: School Desegregation and Bilingual Education:

School Segregation/Desegregation

In a landmark decision, Brown v. Board of Education of Topeka, Kansas,[32] the Supreme Court ruled in 1954 that State-sanctioned public school segregation on the basis of race is "inherently unequal" and unconstitutional. Not only did it outlaw school segregation, overturning its longstanding acceptance of "separate but equal" facilities,[33] but it also provided the basis for dismantling State-imposed (de jure) racial segregation throughout American society.

Before the Brown decision, segregation of Black Americans had been required by law in seventeen southern states.[34] In the Southwest, Hispanic-Americans were also subject to explicit legal discrimination which prevented their equality with the White population. Hispanics faced school segregation comparable to that of Blacks:[35]

> The practice of supporting separate but unequal school conditions throughout the United States for Latinos was not sanctioned by any state law except in California where a state statute providing for separate schools for Mongolians and Indians was interpreted to include Mexican Americans as being in the latter category.[36]
>
> The severest abuses were found in Texas. While there was no [explicit] state law authorizing the segregation of Mexican-Americans, some districts simply failed to educate Chicanos while many others "established 'Mexican' schools." In 1930 a state court held that open segregation of Mexican-Americans was legal. This remained official Texas policy until it was overturned by a federal court in 1948. Mexican-American children were often sent to a Mexican

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[30] Workers homebased in Puerto Rico comprise the second largest segment of the Hispanic migrant population. However, the vast majority of these workers travel the labor stream without children, because either they are single or have left their children and families on the island to await their return. Consequently this study of educational opportunity does not focus on the children of workers homebased in Puerto Rico as the students themselves do not migrate.

The only available statistics on the migrant student population are from the Title I Migrant Education Program (MEP). The 1977 compilation of their figures for current migrant students indicate that California, Texas and Florida account for 69% of the students enrolled in the program. Less than 1% are enrolled in Puerto Rico.

Unless otherwise noted, all MEW student statistics are derived from the 1977 compilations of the Title I MEP enrollment figures, see Appendix A.

[31] Migrant workers travel to work in all the states except Alaska and Hawaii.

[32] Brown v. Topeka Board of Education, 347 U.S. 483 (1954).

[33] Plessy v. Ferguson, 163 U.S. 537 (1896).

[34] Bureau of Educational Research, The Journal of Negro Education 47 (Winter, 1978), p. 100.

[35] U.S. Commission on Civil Rights (USCCR), Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest, Mexican American Education Study, Report I (Washington, D.C.: U.S. Government Printing Office, 1971), p. 13.

[36] Guadalupe Salinas, "Mexican-Americans and the Desegregation of Schools in the Southwest," Houston Law Review 8 (1971), p. 44.

> school though they lived near an Anglo school. In some localities, children were pressured to drop out after the end of the elementary school years. The drive for segregation overrode both the neighborhood school tradition and the obligation to provide equal access to secondary education.
>
> Even after the courts had outlawed segregation, Texas school authorities frequently continued it, building segregated schools in Chicano areas and using a variety of segregationist strategies - gerrymandering, transfer policies permitting white students to escape from integrated schools, and busing for segregation. Other schools used tracking (separate curricula throughout the school career, with initial assignment often based on a standardized test given in English) or placed Chicano children in mentally retarded classes to intensify classroom segregation. When the Texas superintendent of public instruction tried to enforce the 1948 court desegregation order by canceling the accreditation of a small school district that segregated students and teachers, the state legislature abolished his office and transferred his powers to a new commissioner of education, who did nothing.[37]

Levels of Hispanic segregation varied from the explicit practices in Texas to more covert ones in California. These two states educated most Mexican-American students, accounting for 80% of those enrolled in school in 1970.[38]

In the series of judicial decisions which followed Brown, the Supreme Court further defined and refined the issues surrounding the dismantling of dual school systems.[39] School desegregation is a school-devised response to the judicial mandate to achieve unitary school systems. It was not specified by the Supreme Court as the remedy.

Up until 1970 the question of how Hispanics should be classified in the planning for school desegregation remained unanswered. That year a federal court ruled in Cisneros v. Corpus Christi Independent School District that Mexican-Americans are an "identifiable ethnic minority group" for the purposes of school desegregation. This was the first case in which a court officially recognized Mexican-Americans' entitlement to the same protection afforded Blacks under Brown. Theoretically, this prohibited schools from classifying Hispanics as White and then integrating them with Blacks to meet court desegregation orders. However, up until the 1973 Supreme Court decision in the case of Keyes v. School District No. 1, Denver, Colorado, the treatment of Hispanic students in planning for school desegregation remained ambiguous and, consequently, judicial decisions were inconsistent. For example, although considered a minority by Cisneros in Corpus Christi, Texas, during the same year, a state

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[37]Gary Orfield, Must We Bus? Segregated Schools and National Policy (Washington, D.C.: The Brookings Institution, 1978), pp. 199-200.

[38]Jorge Rangel and Carlos Alcala, "Project Report: De Jure Segregation of Chicanos in Texas Schools," Harvard Civil Rights-Civil Liberties Law Review 7 (1972), pp. 311-38.

[39]Outlined in Appendix C.

court in Houston classified Chicanos as White thereby authorizing the school board to desegregate schools on the basis of the numbers of "White" and Black students. As a result, Hispanic and Black students were integrated while non-Hispanic White schools were left unaffected.[40] Then, in 1973, the Keyes decision resolved the issue by extending the protection of the Brown ruling to Hispanics, the nation's second largest minority.

Bilingual Education

The following year the Supreme Court expanded the civil rights of LES minorities with its decision in the case of Lau v. Nichols.[41] The 1974 Lau ruling opened the doors of equal educational opportunity still wider for Hispanics and other language minorities with the Court's recognition that English-only instruction failed to meet the educational needs of LES students. Access to appropriate instruction for linguistically distinct children now had a significant legal basis[42] in the Court's interpretation that the failure to provide LES students with English language instruction or with other adequate instructional procedures denies them a meaningful opportunity to participate in the public educational program and thus constitutes a violation of Title VI of the Civil Rights Act (CRA) of 1964.[43]

The Court did not specify a remedy for the violation. In addition, by defining the violation as a civil rights infraction, the Court did not rule on the plaintiff's contention that bilingual education is a constitutional right.[44] However, the decision did uphold the authority of the Office of Civil Rights (OCR) within the Department of Health, Education and Welfare (HEW) to prohibit linguistic discrimination under the 1964 CRA by affirming the legitimacy of the policy set down in the Department's 1970 "May 25th Memorandum."

The May 25th Memorandum was the first Executive policy statement regarding equal access to educational opportunity for national origin minority students. In its policy statement "language" was defined by HEW as a basic part of "national origin":

> ...it [HEW] now interpreted the Civil Rights Act as forbidding practices that discriminated against students without a working command of English. Since HEW normally only prohibited "discrimination" under Title VI after the courts had already found a practice clearly unconstitutional, this was breaking new ground. Not only

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[40] Ross v. Eckels, 434 F. 2d 1140 (5th Cir. 1970), see Appendix C.

[41] See Appendix C.

[42] The ideological basis had already been set by Title VII, the Bilingual Education Act.

[43] Section 601 of the CRA bans discrimination based on race, color or national origin in any program or activity receiving federal financial assistance.

[44] The contention that bilingual education is a constitutional right is argued cogently by Grubb, Taracido and Teitelbaum.

> that, but the department was proposing to regulate classroom practices with extraordinary vigor.
>
> The policy of May 25, which was aimed at more than a thousand school districts and 3.7 million minority children, required a school to take "affirmative steps to rectify the language deficiency in order to open its instructional program to these students." It challenged existing testing, counseling and assignment practices which put a child in a lower track (a less demanding curriculum for children below grade level) or a mentally retarded class on the basis of a test that often actually measured his [her] proficiency in English rather than his [her] ability.[45]

Effectively, the Lau decision shifted the burden of identifying educational standards from the courts to the executive branch and increased the agency's power.[46]

The impetus behind the May 25th Memorandum was the documentation and subsequent acknowledgement that the public schools were failing the linguistically and culturally distinct child. It has long been noted that linguistic impediments were a primary obstacle to educational achievement.[47] A six-part series initiated in 1971 by the U.S. Commission on Civil Rights (USCCR) identified numerous specific practices and conditions which contributed to the failure of schools in the Southwest to offer equal educational opportunity to Mexican-Americans. In addition to inadequate language programs, the study explored the gross inequities and inadequacies in the curriculum, school policies on grade retention, teacher training, counseling, ability grouping, placement in classes for the educable mentally retarded and concluded that:

> They reflect a systematic failure of the educational process, which not only ignores the educational needs of the Chicano students but also suppresses their culture and stifles their hopes and ambitions. In a very real sense, the Chicano is the excluded student.
>
> The process of exclusion is complex. Each component is strong in its own right, but in combination they create a situation which almost inevitably leads to educational failure of Mexican-American students. The process involves not only the schools themselves, but all other agencies and institutions that make decisions upon public education in the Southwest - decisions regarding who will teach, what will be taught, and how it will be taught.[48]

Bilingual education was offered as an alternative strategy for an

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[45] Orfield, p. 302.

[46] Ibid., pp. 208, 304.

[47] USCCR, A Better Chance to Learn: Bilingual-Bicultural Education, Clearinghouse Publication #51 (Washington, D.C., 1975), pp. 8-9.

[48] USCCR, Toward Quality Education for Mexican Americans, Report VI: Mexican American Education Study (Washington, D.C.: U.S. Government Printing Office, February 1974), p. 67.

education system which was producing low achievement statistics for these language minority students.

In addition to federal efforts during the pre-Lau period, there was pressure evolving in the judicial system. As well as questioning the school financing systems, education lawsuits were challenging the disproportionate placement of linguistically and culturally distinct children in educable mentally retarded (EMR) classes. The plaintiffs contended that the standardized tests and placement process measured English-only capability rather than mental capacity. The decisions returned in the EMR suits affirmed this and made an impact on educational reform by contributing to the notion that the public education program was not working for the language-minority child. These cases, especially Diana v. State Board of Education, led to the development of the 1970 May 25th Memorandum 49 which, in turn, laid the ground for the Lau ruling.

Following the Lau decision, in the summer of 1975 an HEW/OCR advisory task force formulated detailed standards for diagnosis, testing and educating LES students.[50] Titled the Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols, they have become known simply as the "Lau Remedies". Although not issued as regulations, they have been recognized by the courts as having the weight of law. The "Lau Remedies" are used as guidelines to monitor and enforce local schools' CRA compliance.

Predating the May 25th Memorandum, Congress had already made its first major step toward formulation of a federal policy on bilingual education when it passed and funded the Bilingual Education Act of 1968 (BEA). This Act indicated that the official federal policy was one of willingness to explore bilingual education as a potential means to meet the needs of LES students.[51]

While BEA is the major bilingual education funding legislation, the Emergency School Aid Act (ESAA) is a second source of funds for bilingual programs. Passed in 1972, the Act was intended primarily to aid school districts undergoing school desegregation but it also reserves four per cent of the total appropriation for bilingual education.[52]

In 1974 the Equal Educational Opportunities Act of 1974 gave valuable support to bilingual education with its specific identification of monolingual instruction as a denial of equal educational opportunity:[53]

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[49] Diana v. State Board of Education is outlined in Appendix C.

[50] These standards spell out the types of programs appropriate at each school level and for each classification of language ability. In addition, they address the areas of required and elective courses, instructional personnel requirements, racial/ethnic isolation, notification to parents and evaluation.

[51] The Bilingual Education Act or Title VII of the Elementary and Secondary Education Act (ESEA) of 1965 was adopted as an amendment to H.R. 7819, the Elementary and Secondary Education Amendments of 1967, which was signed into law on January 2, 1968 as P.L. 90-247. The purpose of the BEA is to provide money in the form of grants to local education agencies (LEAs) for the development and operation of new and imaginative bilingual programs. It is designed to meet the needs of LES children ages 3-18 who come from low-income homes where English is not the dominant language. Revised six years later, the BEA of 1974 expanded program participation by dropping this economic criteria. In addition, the 1974 Act finally included a definition of what constitutes a bilingual program. Katherine Montgomery, Bilingual Education (Washington, D.C.: Library of Congress, Congressional Research Service, 1974), pp. 6-7.

[52] Montgomery, p. 9.

[53] However, the Equal Educational Opportunity Act of 1974 or Title II of the Education Amendments of 1974 may be seen as a setback for school desegregation because it imposed strong limitations on the use of bussing to integrate schools.

> No state shall deny equal educational opportunity on account of his or her race, color, sex or national origin by...the failure by an education agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program.[54]

In addition, this Act provides that,

> ...an individual denied an equal educational opportunity as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties and for such relief, as may be appropriate.[55]

The Department of Health, Education, and Welfare, through the OCR, is the Federal agency with primary responsibility for ensuring equal educational opportunity for the country's public school students. Therefore, OCR is another principal resource for linguistic minorities in their struggle to gain educational equity.

Enforcement: Bilingual Education and Desegregation

After the Supreme Court had defined school segregation as a constitutional violation and monolingual instruction as a civil rights violation, program implementation and enforcement were the next steps. Both bilingual education and school desegregation have the same implementation and enforcement mechanisms of legislation and litigation.

The CRA of 1964 recognizes a contractual relationship between the federal government and recipients of federal grants. Thus, each school receiving monies must agree to comply with Title VI of the CRA and ensure that:

> No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

With this provision, OCR is also able to demand compliance with HEW regulations for school desegregation. Title IV of the CRA authorizes federal assistance to aid in the desegregation of public schools.[57] Title II allows the Justice Department to become a party in school desegregation suits and permits lawyers seeking a desegregation order to skip the state courts and go directly to the Federal courts.[58] Exhibit 1

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[54] 20 U.S.C., Section 1703(f).

[55] Ibid.

[56] Another resource is the individual state bilingual education mandates, see Exhibit 4.

[57] Technical assistance awards are made to state educational agencies (SEAs), general desegregation assistance centers, LEAs and universities for training institutes. School desegregation assistance is also provided through funds from the Emergency School Assistance and Emergency School Aid Programs.

[58] Bureau of Educational Research, p. 103.

outlines HEW's civil rights assistance mechanism. OCR may enforce compliance through voluntary negotiations, administrative proceedings and/or litigation.

Although both bilingual education and school desegregation enforcement are intended to expand equal educational opportunities, sometimes the two have been perceived to be competitive and in direct conflict. The mandate to desegregate has the potential to present obstacles to concentrating the number of students necessary to organize or maintain language programs which are educationally viable and which also meet the student-dispersal guidelines for desegregation. However:

> ...bilingual education and desegregation need not be headed on a collision course; these educational goals are not necessarily mutually exclusive. Bilingual education programs were first judicially mandated in 1970, four years before Lau, as part of the overall remedy in a Texas desegregation case (U.S. v. State of Texas). Because of the broad remedial powers exercised by the courts to eliminate unlawful segregation, desegregation cases continue to serve as convenient vehicles for court-ordered bilingual education programs.[59]

However, it is necessary to recognize the potential for classroom segregation in bilingual education as well as the dissolution of bilingual programs within a desegregating school system. These issues are discussed further in the FINDINGS which follow.

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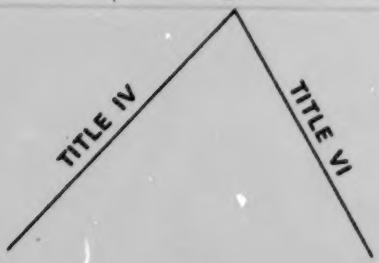
[59]It should be noted that opinions differ on whether intervention in a desegregation suit will indeed yield comprehensive relief for the language minority plaintiffs. These differences are reviewed in FINDING 4. Herbert Teitelbaum and Richard J. Hiller, "Bilingual Education: The Legal Mandate," Harvard Educational Review 47 (May 1977), pp. 161-162.

Exhibit 1: Outline of HEW's Civil Rights Assistance Mechanism

Plessy vs. Ferguson 1896

Brown vs. Topeka 1954

Civil Rights Act 1964



Office of Equal Educational Opportunity (OEEO)	Office for Civil Rights (OCR)
1. SDE	1. Race
2. LEA's	2. Color
3. General Assistance Centers	3. National Origin

OCR (Pottinger) May 25 Memo, 1970

Lau vs. Nichols 1974

OEEO	*OCR*
1. SDE	1. Reviews
2. GAC "B" (9) Lau Centers	2. Identification Non-compliance
	3. "Lau Remedies"
	4. CEP's

Title IV provided general assistance centers to deal with desegregation (now language also) issues and problems, there are nine centers (Lau Centers) throughout the country to address themselves to the problems of non-English-dominant students and to assist school districts in complying with the regulations as enforced by the Office for Civil Rights. These centers are known also as General Assistance Centers Type B to distinguish them from the A centers who deal with non-language problems and activities. The Lau Centers, because they cross regional lines, are administered from Washington through the Office for Equal Educational Opportunity (OEEO), HEW. The A centers are regionalized.

Source: National Education Association. Bilingual Education Resource Guide. Washington, D.C.: NEA, 1977, pp. 35-36.

IV. FINDINGS

In this section the Hispanic migrant child will be placed within the framework of the equal educational opportunities reviewed. Each finding is numbered and followed by a discussion. The findings fall within four broad topics: desegregation, bilingual education, public educational programs and the interface between desegregation and bilingual instruction.

The pervasive finding is that both bilingual education and school desegregation still evade the majority of Hispanics in this country. As a subgroup within that population, Hispanic migrant students' equal educational opportunities are even more tenuous. Their educational rights and needs remain undefined, unmet and are not satisfied by desegregation and bilingual education alone.

FINDING 1: DESEGREGATION Hispanic migrant students do not experience desegregated school settings.

The number and percentage of Hispanic-Americans attending segregated schools is increasing.[60] In fact, the children from areas with heavy Hispanic concentration are more likely to attend predominantly minority schools than Black students.[61]

The trends are particularly dismal for Hispanic migrant students[62] because statistics indicate that less than 50% of all Hispanics in states with a sizeable Hispanic population attend majority schools.[63] The highest Hispanic concentration is in the Southwest, which includes two of the three migrant homebase states, California and Texas. In 1977, these two states accounted for 85% of the total homebase migrant student population. The Southwest is also the region which has experienced the most substantial increase of Hispanic school segregation in the nation.[64]

The deplorable status of Hispanic school desegregation may be attributed to a matrix of factors including the failure to define and identify Hispanics within a segregated or desegregating school system, political problems with enforcement of Brown and second generation desegregation problems which include continued classroom segregation and resegregation. In addition, "migrancy" per se has not been identified as an illegal basis for discrimination.

Failure to Identify/Define Hispanics

The extent of Hispanic student segregation remained unknown until 1977 when the National Institute of Education (NIE) published a volume on Hispanic school segregation from 1970 through 1974.[65] But even these data are limited. It has been analyzed only at the district-wide aggregate level which obscures patterns of segregation and ethnic/racial isolation within a district.[66] Consequently, the true extent of Hispanic segregation still remains unquantified. Somewhere within this unknown are the Hispanic migrant students.

Current efforts[67] to expand the pool of Hispanic segregation

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[60] Aspira of America, Inc., Hispanic Segregation Trends in Major School Districts with Large Hispanic Enrollment (New York: April 1978), pp. II-2.

[61] Ibid.

[62] There is no information available on the extent of the segregation of Hispanic migrant farmworkers.

[63] Aspira, pp. II-2.

[64] Ibid.

[65] Trends in Hispanic Segregation 1970-1974 2 (Washington, D.C.: Center for National Policy Review, Catholic University Law School, January 1977).

[66] Aspira, pp. II-2.

[67] See Office for Civil Rights: Elementary and Secondary Schools' Civil Rights Survey and Aspira, Hispanic Segregation Trends in Major School Districts with Large Hispanic Enrollment.

statistics focus attention on students in large and middle-size school districts of 3,000 children or more with more than 5% Hispanic population. This will effectively bypass the smaller and/or rural schools most often attended by Hispanic migrant children. In addition, migrant students remain unquantified because the racial/ethnic focus of the statistics sought does not include identification of students by their parents' occupation as migrant agricultural workers.

The only statistics currently available on migrant students are those from the record system of the Title I MEP. However, they are not compiled with any racial/ethnic or LES ability classification.

The failure to quantify the level of Hispanic segregation impedes school desegregation efforts. In addition, desegregation has been hindered by the inconsistency with which Hispanics have been identified in general[68] and in particular as a minority group to be protected by the Brown decision.[69]

In spite of the 1973 Keyes decision which recognized that protection, judicial decisions continue to be erratic. It remains uncertain which factors determine how Hispanics should be treated for desegregation purposes.[70] Decisions in New York and Boston recognized the Hispanic community, predominantly Puerto Rican, as a minority group for desegregation purposes.[71] The federal court in Wilmington, Delaware, however, did not.[72] Also, Cubans in Miami have been treated as part of the White category in that city's desegregation plan.

The language in the Keyes ruling extends the protection of Brown only to "Hispanos" in the Southwest. It remains for those in other regions of the country to prove on a case-by-case basis that the Hispanics of that particular area have suffered a history of illegal discrimination and each case must present proof of state-imposed segregation.

This issue of "identifiability" has hindered attempts by Hispanics to intervene or become formal participants in pending desegregation litigation. The vulnerability of Hispanics to differing interpretations of their protection under Brown was reiterated recently in the efforts to desegregate the Milwaukee, Wisconsin school system:

> The issue of legal definition as an identifiable minority emerged in Milwaukee, as it has in other cities. In some desegregation cases judges have ruled that Hispanic children are an identifiable

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[68] The U.S. Census Bureau has used at least 4 different procedures to identify Hispanics. Dr. Reynolds Farley identifies the procedures and omissions in Report to The Honorable Judge Paul Egly in Response to Minute Order No. C 822 854 (Ann Arbor, Mi.: University of Michigan, Population Studies Center, November 1978), pp. 7, 9 and 10.

[69] In 1977 the California court challenged the accuracy of the Los Angeles school district's racial/ethnic census and suggested that economic class acceptance and intermarriage negates the issue of illegal discrimination. Specifically, the court questioned whether the upwardly mobile Mexican-American, who is no longer living in the racial isolation of the barrios, should be considered a minority protected by Brown. William Trombley, "Judge Suggests Board Separate 'Racially Isolated'," The Los Angeles Times, 3 May 1977, Part II.

[70] Indeed, the question has often been who is an Hispanic. For example, the SY1976-1977 Office for Civil Rights' Elementary and Secondary School Civil Rights Survey data for Hispanics was collected on Spanish-surname rather than Hispanic identity.

[71] Hart v. Community School Board of Brooklyn District #2, 383 F. Supp. 699 at 733 (E.D.N.Y. 1974) aff'd 512 F. 2d 37 (2d Cir. 1975); Morgan v. Hennigan, 379 F. Supp. 410 at 415 (D. Mass. 1974).

[72] Evans v. Buchanan, 393 F. Supp. 428 (D. Del. 1975).

minority and must be included in any remedy planned by a district. (See Cisneros v. Corpus Christi, Keyes; U.S. v. Texas (Austin).) In other cases, as in Milwaukee, the ruling itself did not do this and Hispanic intervention in the court case was denied. The school authorities tried to maintain flexibility and even tried at one point to categorize Hispanic children in bilingual programs as "minority" and those not in programs as "White." This was obviously not acceptable to the Hispanic parent group. The court maintained Hispanics were "non-Black," providing flexibility to meet their needs through different quotas. On the other hand, the state defined them as "minority" by legislative action in Chapter 220.[73]

Although the court has found the school district guilty of illegal segregation, the remedy is still under consideration.

The mobility of the migrant students make them particularly vulnerable to these ambiguities in the treatment of Hispanics between the country's regions. As migrant children travel out of their homebase states there is no promise of a desegregated education. Although considered a member of an "identifiable ethnic minority group" six months of the year in Corpus Christi, Texas, a Chicano migrant student may be classified as White in the Milwaukee school system for the remainder of the year. However, judging from the conclusions drawn thus far, the chances are greater that the student would be segregated all year long; as a Chicano in a segregated Texas school and then as a migrant in a "migrant" or remedial classroom in an upstream school.

Non-identification increases the migrants' vulnerability still further. Even when Hispanics are identified as a minority, remedies formulated for them do not guarantee equal educational opportunities for Hispanic migrant students. Migrants will continue to be excluded and/or segregated through a tracking system on the basis of their migrancy status alone. Further, their late arrival into the school program will exclude them from participating in appropriate educational needs assessment surveys and instruction, although those services may exist for others. "Migrancy" is not a classification which is targeted for special attention by the judicial, legislative or administrative agencies other than by the categorical migrant education programs.

The failure to identify migrant students within desegregating settings is reiterated by AFOP's national survey of 347 programs, detailed in Appendix F. Less than one-half of the respondents indicated that migrants were identified as a subgroup for consideration of equal educational opportunities. However, the identification was made overwhelmingly for migrant education programs or bilingual programs, and only 12% of those students identified as a subgroup for consideration were identified as part of a desegregating setting.

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[73] Luis A. Báez, Ricardo R. Fernández, and Judith T. Gaskin, "Safeguarding the Rights of Hispanic Children During Desegregation in Milwaukee Public Schools: A Community Perspective," Midwest National Origin Desegregation Assistance Center, School of Education, University of Wisconsin-Milwaukee (1979), unpublished document, pp. 79-80.

Political Problems in Enforcement of Brown

In part, the extent of Hispanic segregation may be attributed to weak enforcement of local implementation of Brown. This record is deplorable and well documented.[74] The fact is that the desegregation process is a constitutional issue, but to view it apart from the political arena would be naive. A major burden for desegregation in American society has been placed on the public school system. It is clear that although Brown, Keyes and other desegregation decisions challenged unequal school policies and practices, these inequities only reflected a political reality of wider human inequities. Housing and occupational segregation are other key elements perpetuating the status quo. School desegregation is more than an educational issue, it is a human justice issue. As such, the public school system is a political battleground. The process of school desegregation then becomes a political solution which allows the implementation to be worked out in the public arena of competing groups and community interests.[75]

Understanding this context, the courts and federal government have been ambivalent in their implementation of Brown. This is exemplified by the fact that from the 1954 Brown decision until the 1970's neither the courts nor the executive branch seriously attacked segregation or discriminatory educational practices.

> From 1954 to 1973 the Supreme Court, most lower courts, and HEW had desegregated only blacks, usually ignoring the segregation of Hispanics even where it was clearly present, as in Texas.[76]
>
> ...It has been documented that even in instances where HEW was aware of extensive segregation, HEW nevertheless found the districts in compliance....The Ozona reviews are most illustrative in indicating the extent of segregation in Texas....U.S. Department of Health, Education and Welfare On-Site Review of Ozona ISD[77] (March 1970), 1959, 1960 and 1961 clearly show segregated schools for Mexican-Americans, Anglos, and Blacks. During these years neither Mexican-Americans nor Blacks were admitted to the junior high school. The Mexican-American school did not even provide a level above the sixth grade. It was not until 1963 that the school board began matriculating Mexican-American students at the junior high and high school levels. This trend continued to rise slowly, but as late as 1969 there were still clearly identifiable ethnic schools.[78]

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[74] See U.S. Commission on Civil Rights, Desegregation of the Nation's Public Schools: A Status Report (Washington, D.C.: U.S. Government Printing Office, May 1977); U.S. Department of Health, Education and Welfare, National Institute of Education, School Desegregation in the 1970's: Problems and Prospects (Washington, D.C., Fall 1978); Rangel; and Orfield.

[75] Baez, p. 3.

[76] Orfield, p. 202.

[77] ISD = Independent School District

[78] Carlos M. Alcala, Beatriz Rivera and Berta Thayer, "Legal Significance of Lau vs. Nichols," Perspectives on Contemporary Native American and Chicano Educational Thought (D.Q.U. Press, 1973-74), p. 96.

So, although the CRA of 1964 forbids distribution of federal monies to schools which discriminate on the grounds of national origin, as well as race, this was not enforced. National policy changes toward Hispanics came in the 1970's. This may be attributed, in part, to the political pressure for protective law enforcement which came from the revival in the late 1960's of the Hispanic civil rights movement. Schools in California, Texas and other states were boycotted by Chicanos demanding equal treatment.[79] A summary of other Mexican-American civil rights activities appears as Appendix D.

Nonetheless, HEW continued to consciously and expressly abdicate its enforcement responsibilities.[80] Congress and the Executive Branch also undermined school desegregation efforts. Each year from 1966 through 1977, Congress has managed to pass at least one amendment to the CRA designed to restrain integration.[81] In addition, the momentum for desegregation has been slowed down by the replacement of the idea of integration with such terms as "forced busing" and the fostering of the public's belief that court desegregation orders are illegitimate and subject to change by politicians.[82] This conflict between the judicial requirements for desegregation and the legislative and executive efforts against it produced a severe institutional crisis in HEW and the Department of Justice (DOJ)[83] highlighted by the case of Brown v. Weinberger cited below.

Civil rights proponents were forced to sue HEW in order to make the agency enforce Title VI of the CRA. In the case of Brown v. Weinberger, the plaintiffs chronicled HEW's intentional delay in ethnic minority investigations of discrimination and failure to bring enforcement proceedings.

> It found that some Title VI investigations had been pending for eight years, during which period HEW had neither determined whether the school districts involved were in compliance with Title VI nor initiated enforcement proceedings. In other school districts, where HEW had found noncompliance with Title VI (after investigations lasting up to seven years), the department had failed to achieve voluntary compliance yet had commenced no enforcement efforts; these school districts continued to receive federal funds.[85]

In 1976 the federal court ruled in the plaintiffs' favor and ordered HEW to enforce the CRA, thus verifying the allegation of non-enforcement.

Although the making of law is reserved for legislative bodies,

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[79] Meyer Weinberg, Minority Students: A Research Appraisal (Washington, D.C.: U.S. Government Printing Office, U.S. Department of Health, Education and Welfare, National Institute of Education, March 1977), p. 286.

[80] Teitelbaum and Hiller, p. 154.

[81] Florence H. Levinsohn and Benjamin D. Wright, eds., School Desegregation: Shadow and Substance (Chicago: University of Chicago Press, 1976), p. 99.

[82] Ibid., p. 101.

[83] Orfield, p. 6.

[84] See Appendix C.

[85] Teitelbaum and Hiller, p. 154.

the interpretation of statutes as well as state and federal constitutions is performed by the judiciary. As a consequence, the courts have played a decisive role in school desegregation. Litigation has served and will continue to serve as a critical drafting ground for educational reform.

Although there is a heavy reliance on the judicial system to assure integration, the courts may not be the most effective agency to carry out such broad social remedies as desegregation. They are subject to political pressures as are the administrative and legislative branches. In order for court desegregation decisions to be effective, public and political support are necessary. This has been sadly lacking. In addition, the success of desegregation efforts ultimately rests with the local school district.

Further, there are limitations inherent in the judicial system. The courts are still struggling over the definition of which remedies are appropriate to deal with school segregation.[86] In fact, even the definition of "desegregation" remains unclear, depending as it does on who defines it:

> No one has...even given a specific definition to "desegregation". Federal courts sometimes order desegregation of most segregated minority schools and recommend that schools adopt plans approximately reflecting the racial ratio of the district. All plans, however, allow some variance...Federal and state courts have at times left a good deal of segregation in school systems.[87]

Brown did order an end to the racially segregated dual school system. Although the decision mandated a unitary school system, desegregation was not specified by the Court.

The courts are not equipped to force the full range of educational responses necessary in order to assure school integration. The courts lack even the capacity to effectively monitor compliance with their desegregation orders.[88] This is evidenced by the history of foot-dragging noncompliance already reviewed and the proliferation of second generation desegregation problems, which is outlined later.

In the past, major civil rights groups have had to resort to private enforcement to assure compliance. Compliance enforcement has been a

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[86]Farley reviews several different definitions of integration and their implications for actual implementation in Report to the Honorable Judge Paul Egly, pp. iv-viii.

[87]Orfield, p. 135.

[88]As part of their desegregation order, a few federal judges have created mechanisms to monitor compliance with their orders. Some have created special court masters and experts and others have created citizen monitoring and advisory committees to oversee the desegregation efforts. Lila N. Carol, ed. Viewpoints and Guidelines on Court Appointed Citizens Monitoring Commissions in School Desegregation (Washington, D.C.: U.S. Department of Justice, Community Relations Service, May 31-June 1, 1977), p. 2.

matter of extensive time and cost for minorities:

> The limited resources and fragmentation of private civil rights groups and the inherent limitations on case-by-case litigation have made [desegregation] progress slow and hard....Enforcement of constitutional principles through private litigation is inherently uneven since suits can be filed against only a small proportion of communities that are violating constitutional rights. This problem is intensified because civil rights lawyers often feel obligated to litigate cases from communities with particularly desperate problems...and the case makes no contribution to the development of the law....Civil rights groups have been unable to mount a coordinated, adequately financed drive for private enforcement....The fact remains...that private resources are hopelessly inadequate [to insure compliance].[89]

There is a distinct lack of representation and protection of migrant interests. Legal services are available to them;[90] however, the transient nature of their lifestyle prevents them from taking full advantage of these services. In addition, legal services for the poor generally have not dealt with civil rights cases.[91]

As a subgroup of the Latino population, Hispanic migrant students are subject to the same political problems in the enforcement of Brown as their ethnic counterparts. However, migrant concerns are not promised relief by remedies formulated for Hispanics. For even when the exception occurs in a school system; when Hispanics are identified as a minority group for the purposes of desegregation and are desegregated, migrant students in that school system will remain unidentified within the process.

Migrants of Hispanic origin are not identified nor are their unique needs represented. They are swallowed by the larger label: Hispanic. Consequently migrants lack the visibility, political power and/or advocates necessary to ensure that their educational interests are protected within the public and political arena of a desegregating school system. This non-identification also increases their vulnerability to continued classroom segregation and second generation desegregation problems.

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[89]Orfield, pp. 386-387.

[90]Beginning in the early 1970's, the legal needs of migrant farmworkers began to be recognized. The Office of Economic Opportunity (OEO) funded Rural Legal Service programs. Some of these programs were faced with opposition from local Bar Associations, who frequently ran their own programs. Even with both in operation in some places, however, access to legal aid was limited. Many workers who filed complaints or tried to organize were fired. With the demise of OEO, the Legal Services Corporation took over the Rural Legal Service programs. Full-time farmworker-oriented programs are sponsored which provide outreach and specialize in farmworker problems. These programs have been generally successful. Twelve programs are now operating either independently or as Legal Services Corporation grantees. One of the major grantees is the Migrant Legal Action Program (MLAP). Porteous, p. 135.

[91]Orfield, p. 257.

Classroom Segregation and Second Generation Desegregation Problems

Even in those instances where a school has desegregated, the discrimination problems facing minority students do not end. These have been termed second generation desegregation problems. Experience has proven that the reassignment of students is just the first step in the process of integrating schools. Some believe that in order to be termed successful, desegregation must have:

> ...eliminated widely-held racial stereotypes, broadened the cultural values transmitted by the schools, and increased the access of minority children to quality educational programs - the conduit to preferred colleges and jobs. A social revolution of this scale requires extensive adaptations within the internal processes of the school. Since schools are usually stable - often rigid - institutions, these changes are difficult to accomplish.[92]

The local remedy must fit the violations defined by the court. School desegregation, the physical mixing of racial/ethnic groups, does not insure school integration; a setting in which positive interpersonal relations and equal educational opportunities are experienced. This is evident from the consistency with which second generation desegregation problems arise. These problems include discrimination in the following: suspension and expulsion of students, tracking and ability grouping practices, faculty hiring and promotion, as well as the failure to provide the curriculum and instruction appropriate to the minority students' educational needs.

When a student is subjected to these second generation desegregation problems, school desegregation has probably become more dysfunctional to equal educational opportunity than those conditions it was designed to correct. As a minority student, the migrant student is also subject to these dysfunctional problems. The failure to provide Hispanic MFWs with bilingual instruction and minority faculty will be included within the discussions of FINDINGS 2 and 3. The concern at this point, however, is classroom segregation.

Actually, illegal classroom segregation is not only a second-generation desegregation problem. There is a long history of discriminatory classroom placement practices of minority/LES students. Segregated classrooms and resegregation within a desegregated school is generally the result of two prevailing practices:

- Student tracking/clustering based on curriculum and/or instructional programs as well as categorical funding; and

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[92]Gary Orfield, "How to Make Desegregation Work: The Adaption of Schools to Their Newly-Integrated Student Bodies," Law and Contemporary Problems 39 (Durham, N.C.: Duke University School of Law, Spring 1975), p. 314.

- Grouping based on intelligence and/or achievement tests which test the student's ability to take culturally and linguistically biased tests, but which do not measure intellectual capacity.[93]

Federal program regulations were designed to prevent classroom segregation, anticipating that the Lau mandate might encourage schools to resegregate language-minority students.[94] However, there is also a history of failure to enforce these regulations. Furthermore, evidence indicates that, in practice, these same programs are highly segregated for the following reasons:

> First, Hispanic students normally attend schools with considerable segregation. Second, [HEW]...has done virtually nothing about desegregation. Finally, the regulations in the various programs are full of loopholes so large that they make a mockery of the policy statements about desegregation. The regulations permit segregation of groups defined by linguistic ability where local school officials say it is educationally necessary. In practice there have been almost routine segregation at the local level and no federal enforcement of integration policies.[95]

Most classroom data indicate that classroom segregation continues to be a serious problem in desegregating school districts.[96]

Once again no statistics are available, but as part of a language minority group, migrants are vulnerable to placement in segregated classes. In all probability, however, this segregation is not conducted on the basis of LES ability, but rather on the basis of questionably determined intellectual ability which reflect low-level skills and irregular school attendance rather than intellectual capacity. This basis for classroom segregation results in the placement of migrant students in programs which are considered deadend. Further, the likelihood of placement of LES migrant students in classrooms for appropriate language instruction is decreased by their late arrival into the school system, which precludes their placement in the limited space available.

In addition to their minority status, migrants are also susceptible to unfair tracking practices because of their irregular school attendance schedule and the academic problems resulting from it. Their dispro-

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[93] Leonard A. Valverde, "Segregation, Desegregation, and Resegregation of the Spanish-Surname Student in the United States," (Washington, D.C.: National Institute of Education, August 1976, unpublished document), p. ii.

[94] • ESEA Title VII regulations prohibit the use of funds for programs that result in the "separation" or "isolation" of ethnically identifiable groups, except for limited periods of time, when essential.
• The Office for Civil Rights "May 25th Memo" to Selected School Districts with National Origin-Minority Groups has an antisegregation clause which says, "Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track."
• ESEA regulations prohibit the use of its funds in programs that separate minority children for more than 25 percent of the school day, unless such separation could be justified as a bona fide ability grouping." Oscar Uribe, Jr., "Bilingual Education vs. School Desegregation," Agenda (Washington, D.C., May/June 1978), p. 7.

[95] Orfield, Must We Bus?, p. 220.

[96] USCCR, Desegregation...A Status Report, p. 238.

portionate placement in segregated classes or lower tracks is based on their migrancy rather than on their intellectual capacity. For example, in the El Centro school district of California, migrant students are placed on the basis of their identification as migrants into a "continuation school", which is designed for disciplinary problems and does not provide an education comparable to that of the mainstream school: for instance, no bilingual instruction is offered.[97]

It creates logistical problems for an ongoing school program when migrant students enroll into the system several months after classes have started or just months before the school year's end. As a result, migrants are segregated from rather than integrated into the mainstream program:

> If the number of migrants is large, schools invariably enroll them in "new" and separate classes, and in segregated facilities. Not only is it difficult for the migrant child to adapt to the instructional program, but it is nearly impossible to participate in extracurricular activities and other events of the school community....During the years of bulging school enrollments, a barracks or obsolete school building was likely to be reopened to provide space for the migrants. Most school districts anticipating an influx will place a child on "hold" until the arrival of a sufficient number of migrants to start a new class and hire a new teacher.[98]

The practice continues. In 1978 a study reported several Texan schools to be segregating migrant students into separate classrooms on the basis of their migrancy alone. In one instance, this meant that the students were not allowed to participate in sports and extracurricular activities.[99]

In part, the funding of categorical education programs has complicated the issue of segregating migrant students. On one hand the program policy emphasizes mainstreaming the students; yet, the federal monies are intended to supplement rather than supplant local/state monies. Supplementary programs are those which are offered in addition to the regular fare. Although, if the educational services are intended only for migrant students it becomes difficult to avoid segregating them.[100]

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[97]No court determination has been made of the situation yet. Bill McNeil, Attorney, California Rural Legal Assistance, San Francisco, Cal., interview held May 1979.

[98]Dr. José A. Cárdenas, "Migrant Education," Inequality in Education (Cambridge, Mass.: Center for Law and Education, Harvard University, No. 19, February 1975), p. 6.

[99]National Council of La Raza, Texas Migrant Education: An Assessment of the Implementation of the Title I Migrant Education Program (Washington, D.C., August 1978), pp. 43-44.

[100]Vidal Rivera interview.

FINDING 2: BILINGUAL EDUCATION Few limited English-speaking (LES) migrants receive appropriate language instruction.

The rights of language minority students go beyond racial/ethnic desegregation and beyond the right of equal physical access within a school system, to address the suitability of the educational program to the needs of the pupil. The Lau decision stated that:

> ...there is not equality of treatment merely by providing students with the same facilities, text books, teachers and curriculum....students who do not understand English are effectively foreclosed from any meaningful education.[101]

LES Hispanic migrants are clearly entitled to the same educational opportunities provided for other LES students.[102]

Bilingual education has been proposed as one educational alternative to solve the failure of the public school system to provide LES children with equal educational opportunity. The Hispanic community has come to perceive such relief as paramount in its quest to equalize educational opportunity.[103] As part of that language minority, MFW's can also expect bilingual education as a matter of civil rights. However, the school districts are failing to deliver adequate bilingual instruction to all but a fraction of the eligible student population.[104] An example of this failure to deliver bilingual instruction is found in the state of California, one of three homebase states for migrant children. The U.S. Commission on Civil Rights (USCCR) found that the California State Department of Education had failed to ensure that its non-English-speaking and LES students receive equal educational opportunity.[105]

In the Los Angeles, California school system where Hispanics are the largest minority, comprising 32% of the student population, over one-third or approximately 30,000 students do not receive needed language assistance.[106] In addition, the California State Department of Education's Director of Bilingual Education estimated that as many as 80% of the teachers for the "bilingual" program are English-speaking only.[107] Yet, a pilot survey of MFW needs in the same state concluded that:

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[101] Lau v. Nichols, 414 U.S. 563, 566 (1974).

[102] Technically, categorical migrant education program funds cannot be used to meet this need because it would mean supplanting services and monies, i.e., services and monies which the school district was already supposed to be providing.

[103] Peter Roos, "Bilingual Education: The Hispanic Response to Unequal Educational Opportunity," 1977, unpublished document, p. 1.

[104] In 1976 the U.S. Commissioner of Education estimated that only one-ninth of limited English-speaking students were participating in a bilingual program. Bruce E. Cohen, et al., The Co-Existence of Bilingual/Bicultural Programs with School Desegregation Decrees, (Washington, D.C.: Mexican American Legal Defense and Educational Fund, April 1978), p. 18.

[105] U.S. Commission on Civil Rights, California Advisory Committee, State Administration of Bilingual Education.

[106] U.S. Commission on Civil Rights, A Generation Deprived: Los Angeles School Desegregation (Washington, D.C.: U.S. Government Printing Office, February 1979), p. 5.

[107] Chicano Education Project, "Bilingual/Bicultural Education: On the Backburner," Un Nuevo Dia 3 (Lakewood, Col.: Summer 1977), p. 4.

> ...One of the most formidable [obstacles to self-development] is the language barrier. Nearly three-quarters of the farmworkers interviewed were Mexican Nationals with extremely low proficiency levels in English....It not only reduces employment opportunities but significantly contributes to the general alienation and isolation of the farmworkers from the socio-political environment around them.[108]

As outlined in Section II, LES ability is only one of the barriers contributing to the marginalization of the migrant population. However, considering the inadequacy of the programs available to language minorities in California generally, it is not likely that the language needs of LES migrants are being met.

Failure to actualize the promise of Lau may be traced to the following: problems of variations in student eligibility requirements, uncertain program criteria and poor enforcement efforts.

Variations in student eligibility requirements

The U.S. Office of Education estimates that at least 5 million children need bilingual schooling.[109] No precise data are available on the number of limited or non-English-speaking children. Available data from different sources, such as Title VII and the OCR student survey, are incompatible because there is no uniform measure by which the schools determine language ability. There is a need to develop criteria for identifying language skills among English-dominant speakers as well as non-English-dominant speakers. Exhibit 2 exemplifies the discrepancies in the available LES ability statistics by citing the varying definitions of LES contained in 19 state bilingual educational laws. In addition, studies indicate that it is not easy to assess the language ability of a student and that accurate assessments of ability are best made by a professional. The usual school procedure of relying on teacher assessment is equally reliable to that of the Bureau of Census approach, asking the parent for language assessment.[110]

The only source of national data on migrant students is the Uniform Migrant Record Transfer System (MSRTS), a computerized data bank on the Title I MEP enrollees.[111] However, this system has never collected information which would indicate language ability.

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[108] Barrio Planners and El Progresso Del Desierto, "A Survey of Significant Segments in the Coachella Valley," 1977, unpublished document, p. 6.

[109] Amado M. Padilla, Bilingual Schools: Gateways to Integration or Roads to Separation (Chicago: National Institute of Education, Developmental Conference on Policy Problems in Educational Options, June 29, 30 and July 1, 1976, unpublished document), p. 10.

[110] Roger W. Shuy, "Implications of Recent Sociolinguistic Research for the Problems of Migrant Worker Children," Paper presented at the Seminar of the Association Internationale Pour La Recherche et La Diffusion Des Methodes Audio-Visuelles et Structure-Globales (10th, Ghent, Belgium, May 28-30, 1976), p. 10.

[111] Further discussion of the MSRTS follows in the subsection titled "Limitations of the Migrant Education Programs," of FINDING 3.

Exhibit 2: Target Group Definitions Contained in the State Bilingual Education Legislation

Alaska. Pupils of limited-English-speaking ability whose primary language is other than English.

Arizona. Pupils who have difficulty in writing, speaking, or understanding the English language because they are from an environment wherein another language is spoken primarily or exclusively.

California. Limited-English-speaking and non-English-speaking children. Limited-English-speaking children are children who speak a language other than English in their home environment and who are less capable of performing school work in English than in their primary language; non-English-speaking children are those who communicate only in their home langauges.

Colorado. Students with linguistically different skills, defined as students who are not able to take full advantage of present educational programs taught in English because of their language skills and who come from an environment of different customs and traditions which may include the influence of another language in their family, community, or peer group.

Connecticut. Pupils who, by reason of foreign birth, ancestry, or otherwise, experience difficulty in reading and understanding English.

Illinois. Limited-English-speaking children defined as (1) children who were not born in the United States whose native tongue is a language other than English and who are incapable of performing ordinary classwork in English; and (2) children who were born in the United States of parents possessing no- or limited-English-speaking ability and who are incapable of performing ordinary classwork in English.

Indiana. Non-English-dominant children defined as children who have difficulty performing in classes conducted solely in English because they usually speak a language other than English or have such a language as their mother tongue or because such a language is most often spoken in their homes.

Maine. Children from non-English-speaking families.

Massachusetts. Children of limited-English-speaking ability defined as (1) children who were not born in the United States whose native tongue is a language other than English and who are incapable of performing ordinary classwork in English; and (2) children who were born in the United States of non-English-speaking parents and who are incapable of performing ordinary classwork in English.

Michigan. Children of limited-English-speaking ability defined as children who have or reasonably may be expected to have difficulty performing ordinary classwork in English because their native tongue is a language other than English or because they come from a home environment where the primary language used is a language other than English.

New Jersey. Limited-English-speaking pupils defined as children whose primary language is other than English and who have difficulty performing ordinary classwork in English.

New Mexico. Culturally and linguistically different students defined as students who are of a different cultural background than the majority culture of the State and whose native tongue is a language other than the language of majority culture within the State.

New York. Pupils who, because of foreign birth, ancestry, or other reasons, experience difficulty in reading and understanding English.

Oregon. Pupils whose native language is other than English.

Pennsylvania. Non-English-dominant children.

Rhode Island. Children of limited-English-speaking ability defined as children whose native tongue is a language other than English and who have difficulty performing ordinary classwork in English.

Texas. Children of limited-English-speaking ability defined as children who have a native tongue other than English and who have difficulty performing ordinary classwork in English.

Wisconsin. Limited-English-speaking pupils defined as pupils whose ability to use the English language is limited because of the use of a non-English language in their families or in their daily, nonschool surroundings, and who have difficulty in performing ordinary classwork in English as a result of such limited-English-language ability.

Virgin Islands. Pupils who are unable to speak, understand, read, and/or write the English language well enough to carry on the normal class activities of the grade in which they are enrolled.

Source: Waggoner, Dorothy. State Education Agencies and Language-Minority Students. Washington, D.C.: U.S. Department of Health, Education and Welfare, National Center for Education Statistics, 1978.

It has been noted that even LES ability figures submitted by school districts within the same state often are not comparable because the definitions are open to individual interpretation.[112] In addition, LES ability figures within the same school districts vary according to the occasion. Figures entered for Title VII are often inflated in order to generate program monies, while the numbers are played down to Title IV for compliance appearance.[113] Although they are housed in the same federal department - HEW - there are no crosschecks between these agencies to verify the size of the LES student population.[114]

Then, it is not surprising to discover that no reliable data exist on a national level which would indicate the number of limited or non-English-speaking students who are served by a language program. Most compliance evaluations acknowledge that the majority of eligible students are not being served.

In all probability the Title I MEP is the only avenue available to migrant students for bilingual instruction. As pointed out in the classroom segregation discussion, the school attendance schedule of MFW's often precludes their children's participation in the mainstream programs. Consequently it is dubious that they would have access to the limited bilingual education programs available to the districts' year-round residents.

From district to district there are changes in the definition of eligibility for language instruction. Also, there are variations in the minimum number of identified students necessary to require the school to provide bilingual instruction. This minimum number varies from state regulation to state regulation,[115] as does the criterion of whether these students need to be from the same language minority group.

The controversy can be traced back to the Lau decision in which Supreme Court Justice Blackmun implied that the ruling recognized, or applied to, only the rights of groups of students, in this case 1,800 Chinese-speaking children, as opposed to the rights of each individual.[116] It should be noted that while numbers were the heart of the issue for Blackmun, the federal courts and the U.S. Constitution consistently refers to rights in terms of individuals.

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[112]The Federal agencies have left the definition open to individual interpretation on the OCR compliance trigger form: only if a violation is suspected are the criteria for assessing LES ability scrutinized. Yet, it is this same form which OCR relies upon to trigger an investigation. Roy Rodriguez, Office for Civil Rights: Equal Opportunity Specialist, Federal National Origin Minority Discrimination Policy Branch, Division of Standards and Policy Development, interview held in Washington, D.C. November 1978.

[113]Ibid.

[114]Ibid.

[115]Sharron Jones, Title IV Equal Educational Opportunity Program Specialist, Division of Technical Assistance, interview held in Washington, D.C. October 1978.

[116]Judge Blackmun's often-quoted concurring opinion stated that:

> I merely wish to make it plain that when, in another case, we are concerned with a few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guideline require the funded school district to provide special instruction. For me numbers are at the heart of this case and my concurrence is to be understood accordingly. [Emphasis added.]

In Section 1703 of the Equal Educational Opportunity Act of 1974, the denial of educational opportunity to the individual is prohibited. The Act states that:

> No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex or national origin by....(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation in its instructional programs.

Title VI also speaks of the individual's rights by providing that "no person" shall be subject to discrimination. In contrast, the "Lau Remedies" recognize individual rights but the "Remedies" also note that the program adopted to address those rights need not be as extensive or sophisticated as a program for twenty or more children of a particular national origin group. In application:

> Practical considerations, particularly the distribution of entitled students among schools within a district, will be the rule of thumb when a court is determining the feasibility of bilingual programs. More than likely the court will rely on the numerosity standards of the Lau remedies and the state bilingual education statute, if any.[117]

Further explanation is needed to clarify the responsibilities of the public school system to the equal educational opportunity needs of each LES student.

These ambiguities in numbers and definitions of LES students will affect migrants. There will be uneven treatment of their needs as they transfer from one school to another during the year. In addition, their eligibility may be questioned on the basis of their migrancy, particularly in the upstream states. Can the length of a LES student's residency qualify that student's civil right to language instruction? Or, is a small English-language-dominant community in North Dakota, obligated to provide bilingual programs for fifty LES migrant students enrolled in their school system for three months of the school year?[118]

Until the issues surrounding eligibility are clarified, Hispanic migrant students will be distinctly vulnerable to uneven interpretations of their civil rights as they travel through various jurisdictions. However, even if the definitions of LES and eligibility have been resolved and students are identified in sufficient numbers to be served, the type of language program required to meet their civil rights will remain subject to the interpretation of each local school system.

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[117] Teitelbaum and Hiller, p. 159.

[118] As outlined above, each individual has a right to appropriate instruction, although the remedy may differ in response to the numbers of LES ability students to be served. Failure to provide the instruction is a civil rights violation; however, in practice the school district's responsibility is not clear.

Uncertain Language Program Criteria

In the U.S. there is a great variety of language programs designed to meet the equal educational opportunity needs of limited and non-English-speaking students. However, there is no agreement as to which program format meets those needs, what they should achieve or what method should be used.

All three branches of the federal government can be cited as favoring bilingual education over other curricular alternatives as an appropriate response to the civil rights of language-minority students. Bilingual education, however, is not a single concept.

> The typical definition, "instruction using two languages as media of instruction," obscures a wide range of philosophical and programmatic differences. One researcher identified more than 400 types of bilingual education, depending on such factors as goals of the program (e.g. assimilation or pluralism), extent of subject matter taught through each language (e.g. a "50-50" program, offering half of each day in each language), and the number of language groups being served (e.g., "two-way" or "one-way" programs).[119]

Appendix E outlines the five different types of language programs as the following: English-As-a-Second Language/Bilingual (Transitional), Bilingual Maintenance, Bilingual/Bicultural (Maintenance), Bilingual/Bicultural (Restorationist) and Culturally Pluralist. It is uncertain which offers language-minority students the appropriate equal educational opportunity. A brief history of bilingual language instruction may clarify the issues.

In the early 1800's an estimated one million students throughout the U.S attended bilingual programs in public schools.[120] Most school laws and administrative policies were silently permissive regarding the language of instruction.[121] As drafted, the constitutions of California and New Mexico granted linguistic equality between Spanish and English in principle, albeit not in practice.[122]

Increasing nationalism, immigration, and anti-Catholicism brought this tolerance for linguistic diversity to an end by 1900.[123] The subsequent English-only era extended past World War II. It was not until the early 1960's that bilingual education experienced a revival. The Cuban refugees arriving in Florida provided the catalyst. Also, a small number of bilingual programs began to be offered in the Southwest.

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[119] Perry A. Zirkel, "The Legal Vicissitudes of Bilingual Education," Phi Delta Kappan 58 (January 1977), p. 409.

[120] Bilingual programs in sectarian schools predated those in the public system.

[121] Zirkel, p. 409.

[122] Ibid.

[123] Ibid., p. 410.

It was not until the 1967 passage of the BEA, Title VII of the ESEA, that bilingual education became a national program. This was the first piece of federal legislation which recognized the use of language other than English in the public school classroom.[124] Federal support was evident from the steady increase in BEA program appropriations since the beginning to the FY79 budget of $150 million. It is important to note that the BEA is only one of the federal programs aiding bilingual education. Exhibit 3 indicates that there is legislative authority for more than 20 different types of bilingual educational activity to be found in the law.[125]

The May 25th Memorandum, Lau decision, Lau Remedies and subsequent actions reiterate the federal support for bilingual education. Although it is still not clear for which program and what goals this support is intended.[126] Both the Supreme Court and HEW decline to prescribe a type of language assistance program, because such prescription is outside their jurisdiction, and thus leave the ultimate decision to the local school districts themselves. Each locality is faced with determining what program response would offer equal educational opportunity for language minority students. In the case of Fairfax County, Virginia, the repercussions of this failure to prescribe a specific language program were keenly felt. In the 1977-78 school year, its school system was praised by HEW for its multilingual teaching system. Then the next year the Department was threatening to cut all federal funds to the schools because of the county's approach to multilingual instruction.[127]

Often, these public school systems were being asked to make an about-face in their attitudes toward language minorities. Prior to 1968, 21 states, including Texas and California, had laws requiring English as the sole language for instruction in the public school system.[128] In seven states, including Texas, teachers who taught bilingually were subject to criminal penalties or loss of their licenses.[129] Schools in the Southwest, particularly Texas, were notorious for their punishment of students who spoke in their native tongue on the school grounds:

> In a South Texas school, children are forced to kneel in the playground and beg forgiveness if they are caught talking to each other in Spanish; some teachers require students using the forbidden language to kneel before the entire class....In a school in the Rio Grande Valley, teachers appoint students as "Spanish Monitors." Their job: to patrol the corridors, writing down the names of any fellow students they hear talking Spanish.[130]

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[124] Ibid.

[125] National Education Association, Bilingual Education Resource Guide (Washington, D.C.: NEA, 1977), pp. 10-12.

[126] For example, HEW Secretary Califano is currently reviewing the "Lau Remedies" for possible revision. "Action Alert: Lau Remedies Under Attack," Education Law Bulletin (March 26, 1979).

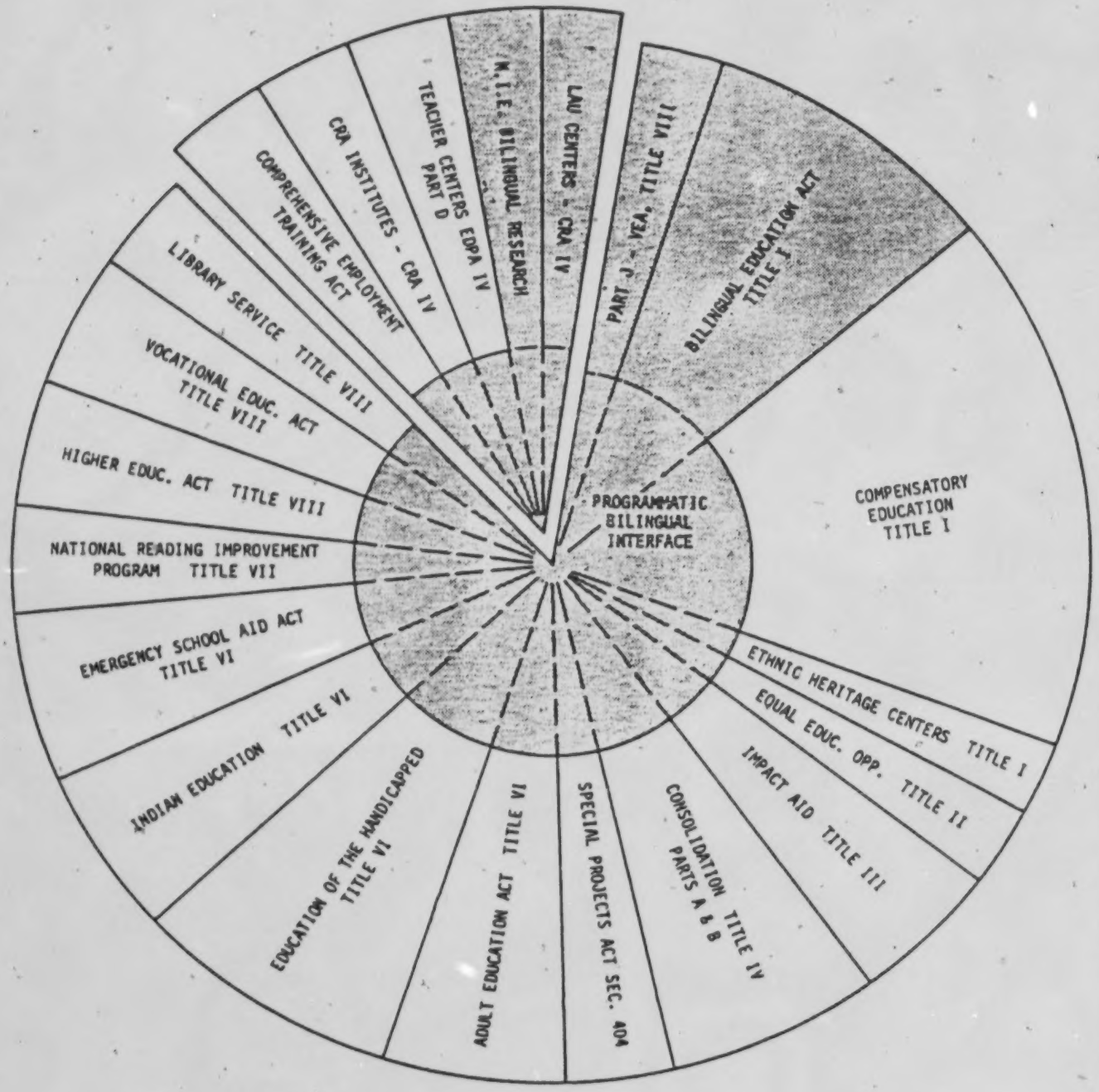
[127] Ernest Holsendolph, "H.E.W. of 2 Minds on Bilingual Policy," The New York Times (January 7, 1979), p. 24.

[128] Montgomery, p. 5.

[129] Ibid.

[130] Charles E. Silberman, Crisis in the Classroom (New York: Random House, 1970), p. 94.

Exhibit 3: Bilingual Program Interface


PROGRAMMATIC BILINGUAL INTERFACE
BILINGUAL EDUCATION ACT TITLE I
COMPENSATORY EDUCATION TITLE I
ETHNIC HERITAGE CENTERS TITLE I
EQUAL EDUC. OPP. TITLE II
IMPACT AID TITLE III
CONSOLIDATION TITLE IV PARTS A & B
SPECIAL PROJECTS ACT SEC. 404
ADULT EDUCATION ACT TITLE VI
EDUCATION OF THE HANDICAPPED TITLE VI
INDIAN EDUCATION TITLE VI
EMERGENCY SCHOOL AID ACT TITLE VI
NATIONAL READING IMPROVEMENT PROGRAM TITLE VII
HIGHER EDUC. ACT TITLE VIII
VOCATIONAL EDUC. ACT TITLE VIII
LIBRARY SERVICE TITLE VIII
COMPREHENSIVE EMPLOYMENT TRAINING ACT
CRA INSTITUTES - CRA IV
TEACHER CENTERS EDPA IV PART D
N.I.E. BILINGUAL RESEARCH
LAU CENTERS - CRA IV
PART J - VEA, TITLE VIII

Source: National Education Association. Bilingual Education Resource Guide. Washington, D.C.: NEA, 1977, p. 12.

Yet, in the face of no clear program prescriptions, these same educational institutions are determining the remedy for language-minority students. Naturally, this increases enforcement problems.

If a migrant student does enroll in a language program, the discrepancies between different school districts' bilingual goals and approaches further complicate the student's educational experience. In addition, when the bilingual program is not sensitive to the cultural nuances and linguistic dialects of the particular student group, the efforts might prove to be dysfunctional. As one migrant student put it:

> At school, the main problem is the language problem. At home we are considered disrespectful if we speak to our parents or relatives in English. But at school, we are considered disrespectful if we speak in Spanish. At school, the teacher will say, when we are being scolded, "Look at me: I am talking to you." But at home, when we are being scolded, we must bow our head and look away from the parent to show our shame. There are a lot of cultural differences like that. We find ourselves having some kind of paranoia at school. Even in the barrio, we learn barrio-Spanish, with its coined words. The farm sector has a more basic use of the Spanish language. Even the use of the style of language within the Mexican American community is a culture prejudice, a class issue.[131]

Within the Hispanic community there are several distinct Spanish-speaking populations with unique cultural, linguistic and socio-economic characteristics. Within each of these distinct groups there is considerable variability. One important source of variability involves the degree of bilingualism and contextual use of language.[132] For instance, a child will learn to pronounce "calle"[133] as /kaye/ in Mexico, but, as /kaẽ/ in Texas.[134]

The regional differences in Mexican-American dialects are well known. For example, what is sometimes called "Tex-Mex" is a regional variant of Spanish with some English borrowings in the lexicon, such as "troca" for "truck".[135] Yet:

> It is commonplace to encounter descriptions of the Spanish spoken in Texas as "not a language," or as "a random mixture of English and Spanish, having no grammar," and to hear it stigmatized with the label "Tex-Mex." Several recent studies have documented the falsity of these claims, by showing that Texas Spanish is simply a

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[131] Paul Sultan and David Enos, Farming and Farm Labor: A Study of California (The Center for Urban and Regional Studies, Claremont Graduate School, 1974, unpublished document), p. 92.

[132] Luis M. Laosa, "Bilingualism in Three United States Hispanic Groups: Contextual Use of Language by Children and Adults in Their Families," Journal of Educational Psychology 67 (1975), p. 216.

[133] "Street" in Spanish.

[134] Muriel R. Saville and Rudolph C. Troike, A Handbook of Bilingual Education (Washington, D.C.: U.S. Office of Education, Clearinghouse for Linguistics, 1970), p. 10.

[135] Ernest Garcia, "Chicano Spanish Dialects and Education," Aztlan-Chicano Journal of the Social Sciences and Arts 2 (Spring 1971), pp. 67-78; Muriel Saville-Troike, "Bilingual Children: A Resource Document," Bilingual Education Series: 2 (Arlington, Va.: Center for Applied Linguistics, 1973), pp. 33-34.

variety of the North Mexican Spanish dialect, with a fully developed grammatical and phonological system, and distinguished only by the relatively larger number of English loanwords it has adopted.[136]

A bilingual program will be more effective if the particular cultural context of its students is understood and assessed. Yet, once again Hispanic migrant students are made particularly vulnerable because of their travels. As migrants travel out of the homebase area and enter an upstream bilingual program, the students are asked to learn in still another Spanish dialect, the one indigenous to the upstream area.

Enforcement Problems

As outlined earlier, the judicial mandate for language instruction comes from the 1974 Supreme Court ruling in Lau. Then, the "Lau Remedies" spelled out the required language assessment categories, types of programs appropriate for each of the language ability classifications, regular and elective courses, instructional personnel, racial/ethnic isolation, notification to parents and evaluation.

HEW's ability to enforce the Remedies has been questioned.[137] For example, OCR has often considered a school district to be in compliance with Title VI if it simply promised to seek advice concerning bilingual education.[138] In addition, HEW's enforcement efforts have been hampered by generally weak political support and confusion over the basic philosophy which have resulted in the following problems:

- Lack of commitment by State Education Agencies and local school districts to the development of quality programs;
- Insufficient funds for programs;
- Token programs or programs designed to fail;
- Lack of enforcement despite flagrant noncompliance by local school districts;
- Continued widespread misunderstanding of the concept, resulting in weak political support for bilingual-bicultural education;
- A severe shortage of trained bilingual-bicultural teaching specialists;
- Inadequate training programs; and,
- Lack of research evaluating the effectiveness of programs.[139]

As indicated by Exhibit 4, ten states retain laws which make English the exclusive language for classroom instruction. This affects at least

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[136] Saville, Handbook, p. 10.

[137] Schumack, p. 44.

[138] Alcala, Rivera, and Thayer, p. 101.

[139] Chicano Education Project, pp. 2-18.

Exhibit 4: Status of Bilingual Education in the 50 States

State	Statutes Prohibits B.E. P/NP	P	No Statutes	Statutes Permits B.E.	Statutes Mandates B.E.
Totals	7	3	13	18	9
Alabama	X				
Alaska					X
Arizona				X	
Arkansas	X				
California					X
Colorado					X
Connecticut				X	
Delaware		X			
Florida				X	
Georgia			X		
Hawaii			X		
Idaho		X			
Illinois					X
Indiana				X	
Iowa				X	
Kansas				X	
Kentucky			X		
Louisiana				X	
Maine				X	
Maryland			X		
Massachusetts					X
Michigan				X	
Minnesota				X	
Mississippi			X		
Missouri			X		
Montana	X				
Nebraska	X				
Nevada			X		
New Hampshire				X	
New Jersey					X
New Mexico				X	
New York				X	
North Carolina	X				
North Dakota	X				
Ohio			X		
Oklahoma		X			
Oregon				X	
Pennsylvania				X	
Rhode Island					X
South Carolina			X		
South Dakota			X		
Tennessee				X	
Texas					X
Utah				X	
Vermont			X		
Virginia			X		
Washington				X	
West Virginia	X				
Wisconsin					X
Wyoming			X		

P/NP - Prohibitory in both public and private non-profit institutions. P - Prohibitory in public schools only.

Although ten states have laws prohibiting the use of any language other than English in their classrooms, four of these states—Delaware, Idaho, Montana and Oklahoma—do not enforce their legislation and thus actually permit the use of bilingual instruction. Other states which do not have statutes relating to bilingual education receive Federal monies for such instruction. Migrant education is not specifically prohibited by statute in any state.

Source: National Council of La Raza. Agenda. Washington, D.C.: May/June, 1978, p. 7.

24,350 migrant children enrolled in the Title I MEPs in those states, or 9.4% of the total national enrollemnt.

It should be noted that even in those states with their own state-legislated bilingual act, there have been problems with compliance, as well as with serving the target population. For example, in Colorado the Commissioner of Education has failed to enforce that state's Act in school districts which have blatantly and openly refused to implement even token programs.[140] The mandatory bilingual education act in Texas, targeted only for first through third grades, is loosely designed and therefore lacks any practical way to enforce the law. Nor has the State of California had better results. To the extent that it exists, California's bilingual program monitoring is limited to paper reviews based on self-serving statements by the districts.[141] These same districts received nearly $45 million in state and federal categorical aid to "serve" 133,000 LES pupils (of an estimated 300,00) and, by their own admission, only enrolled 64,000 students, or fewer than one-half of those targeted for service.[142]

The failure to enforce compliance should not be surprising in light of the lack of hard data, eligibility definitions and program criteria. Academic arguments are still going on as to whether the "Lau Remedies" even have the force of law or not.[143]

> This [the "Lau Remedies"] has been perhaps one of the most misunderstood, misinterpreted, misquoted, and abused documents ever produced by any federal agency.[144]

Further, bilingual education has been subject to the same political problems and limitations with enforcement as desegregation. For example, although the appropriations to the BEA had increased steadily, by 1974:

> The administration...made clear its unwillingness to finance anything more than research and small experiments. The new approach, it said, would have to be a state and local financial responsibility - a decision that was also an indirect decision about enforcement. With no federal financial leverage, the possibility of enforcing any kind of detailed standards diminshed. Many of the large urban systems and isolated rural districts that were particularly important for Latino children were already in serious financial trouble...Even after Congress extended the bilingual education program and appropriated the funds for it, HEW refused to spend much of the money....After allowing for inflation, the administration proposed to do less after the Supreme

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[140] Ibid., p. 2.

[141] Ibid., p. 4.

[142] Ibid.

[143] William G. Milan, Toward a Comprehensive Language Policy for a Desegregated School System: Reassessing the Future of Bilingual Education (InterAmerica Research Associates, January 1978), p. 16.

[144] Ibid.

> Court decision [Lau] than before. Though praising bilingualism as an alternative to desegregation, the President predicted that the maximum possible effort under the new budget would be 284 classroom projects in the entire country and the training of about 1,500 new bilingual teachers.[145]

As with desegregation enforcement, Hispanic migrant students are subject to the same problems as other Hispanics. However, a distinction may be reiterated: the mobility of migrants can be expected to increase their vulnerability to the discrepancies between the school districts' programs and, thus, adversely affect their chances for equal educational opportunity.

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[145]Orfield, Must We Bus?, pp. 305-306.

FINDING 3: PUBLIC EDUCATIONAL PROGRAMS The present system of public educational programs has failed to adequately address the equal educational opportunity needs of Hispanic migrant children.

The available educational statistics document that migrant students are not realizing their potential within the public school system. On the average, they have no more than a sixth grade education.[146] A California study indicated that in 1973 only 20% of its migrant students even stayed in school past the sixth grade.[147] The 1976 school dropout rate for Texas migrants in the Rio Grande Valley was cited as being 84%.[148]

The overwhelming evidence indicates migrants' exclusion, both physical and functional, from the public educational system as well as from the mainstream of society. The pattern of physical exclusion is reflected in the educational system's failure to recruit and enroll all students as well as its inability to accommodate migrant students in the schools due to inflexible administrative requirements. Functional exclusion is indicated by the migrants' high dropout rate and poor academic record in addition to the schools' failure to service bilingual needs and revise insensitive administrative procedures. This exclusion may be attributed to a matrix of issues stemming from the uncertain responsibilities of the public school system and the limitations of the migrant education programs.

Uncertain Responsibilities of the Public School System

Equal educational opportunity is defined by the CRA; however, beyond that Act there is no further definition. The Supreme Court has not presented clearly the complete definition of equality as it applies to the public educational system, so the scope of an individual's rights to equal educational opportunities remains uncertain.[149] In fact, the U.S. Constitution does not identify any right to an education. The responsibility for education is delegated to the States by the 10th Amendment. Herein lies the question: What is the nature of the States' responsibility?

The interpretation of the nature of that responsibility is currently in the process of changing. Due to the public's concern for insuring equal educational opportunity, the issue of accountability has been redirected to the public school system: responsibility for students'

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[146] President's Commission, p. 1224.

[147] Sultan and Enos, p. 35.

[148] John Davidson, "A Harvest of Poverty," The Texas Observer (February 3, 1978), p. 4.

[149] Martha A. McCarthy, "Is the Equal Protection Clause Still a Viable Tool for Effecting Educational Reform," Journal of Law and Education 6 (April 1977), p. 181.

failures has been transferred from the children to the school system.[150] Low achievement by language minority students has been translated into the schools' failure to provide appropriate instruction.[151] The low enrollment of the handicapped has been translated into the system's reluctance to deal with the exceptional child. The federal government, state legislatures and countless local school systems have directed efforts to meet these responsibilities. Judging from the record, the systems' responsibilities to their migrant students evidently have not been met. Of course, this contention of the schools' failure rests on the assumption that the public school system has an obligation to educate migrant students. This is not certain. As one school administrator put it:

> Most of the districts [in the region] have made no effort to identify migrant students' needs except where Title I monies are being used for migrant programs...Some, if not most, school districts lack the sophistication to assess the needs of special student groups causing educational vacuums. Special services to students, such as migrants, are often limited to what is available through Title I Migrant funds and exclude them from other needed programs.[152]

The responsibility of the public educational system to the migrant population is not clear. In fact, it is not even clear exactly whom and in what manner the school system is obligated to serve. It was this ambiguity which had allowed Texas schools to regularly refuse enrollment to any Mexican-American through the 1920's.[153] And it was this same ambiguity which resulted in one-half of the Nation's 8 million handicapped children not receiving an appropriate education.[154] Indeed, one million were excluded from the public school system altogether. Up until the 1977 passage of protective federal statutes,[155] the handicapped student was in a situation analagous to that of the migrant. For both, migrant and handicapped students' access to a public education was not prohibited per se, but neither was it facilitated. Both often were exempted from the state's mandatory attendance laws by design or "accident".[156] Neither migrant nor handicapped children were sought out actively because to serve their educational needs would be expensive. In short, both were expendable.

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[150] Henry J. Casso, Bilingual/Bicultural Education and Teacher Training (Washington, D.C.: National Education Association, 1976), p. 10.

[151] For one comprehensive discussion of the need to provide an instructional program which is compatible with the characteristics of the learner in order to reverse the pattern of educational failure of the nontypical child, see: Dr. José A. Cárdenas, "Educational Issues Concerning Hispanic Americans" (San Antonio, Tx.: Intercultural Development Research Association, September 20, 1977, unpublished document). His theory posits that in order to develop such an instructional program, it is necessary to identify and eliminate incompatibilities. Over 40 such incompatibilities are indentified and grouped into five broader areas: poverty, culture, language, mobility and societal perceptions.

[152] Survey response from Alfonso López, President, Kansas Association for Bilingual Education, and Director, Bilingual Education Program of Kansas City Public Schools; Kansas City, Missouri, January 1979.

[153] Weinberg, p. 286.

[154] National Advisory Committee on the Handicapped, "Education of the Handicapped Today," American Education (June 1976), p. 1.

[155] Title V, Section 504, of the Rehabilitation Act of 1973 (P.L. 93-112) and The Education for All Handicapped Children Act of 1975 (P.L. 94-142).

[156] For a review of the use/misuse of mandatory attendance laws, see: Children's Defense Fund, Children Out of School in America (Cambridge, Mass.: Children's Defense Fund of the Washington Research Project, Inc., October 1974).

Laws, albeit poorly enforced, now officially compel any federally-assisted school district to conduct an annual effort to locate and recruit each handicapped child. So the proportion of handicapped children receiving an education has seen a steady rise,[157] for migrant children underenrollment remains a problem.[158] The rate of school enrollment for MFW children is the lowest of any student group in the country.[159] Outside of the categorical migrant education programs, there is no official obligation to conduct efforts to recruit and enroll this population.[160]

There is no reliable information or sense of how many children are not enrolled in school.[161] However, an independent survey indicates that the figures could prove to be alarming. The results show that in certain counties percentages of children unenrolled are as high as 20, 30 and 40 percent.[162] Further, the children from large, poor, LES, rural, non-white, less educated and unemployed and underemployed households are disproportionately represented.[163]

> Children are excluded from school by a range of barriers, overt and subtle. Many school officials and others seek to blame parents and children for being out of school....(But)...most children out of school are out not by choice, but because they are excluded by school and societal policies and omissions....These include statutory exemptions from compulsory attendance laws; school and book fees; transportation charges; poor enforcement of truancy laws; inadequate programs for bilingual children; and lack of clothing for poor children.[164]

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[157] Nonetheless, 45% of the handicapped student population are still not receiving an education. Although, this does compare favorably with the 60% unserved in 1970 and nearly 90% only 20 years prior to that. National Advisory Committee on the Handicapped, p. 1.

[158] Underenrollment of migrant students is discussed further in FINDING 3, under the subsection titled "Limitations of the Migrant Education Programs."

[159] President's Commission, p. 1224.

[160] Except as handicapped students, and studies indicate that handicapped migrant students are severely underreported. Klumpp, p. 31.

[161] Rochelle Beck and John Butler, "An Interview with Marian Wright Edelman: The Rights of Children," Harvard Educational Review 44 (A Special Issue - Part II, February 1974), p. 56.

[162] Ibid.

[163] Children's Defense Fund, p. 38.

[164] Ibid., p. 55.

Although the failure to legislate and enforce protective child labor laws for agricultural work is a problem for migrants,[165] clearly, under-enrollment is a public school system problem, not just a "migrant problem".

While discrimination on the basis of ethnic origin and handicap is now prohibited, school policies which discriminate on the basis of migrancy, socio-economic level or immigration status are not forbidden, but rather are practiced. For example, the educational rights of the children of undocumented aliens and documented alien workers are not clear, and this inhibits the students' school enrollment. Further, there is growing pressure to penalize undocumented workers residing in this country.[166] For instance, with nearly 50,000 Mexican alien students enrolled in its schools for the 1975-76 school year,[167] the Texas legislature enacted a statute in 1975 which:

> ...limited free public education to citizens and legally admitted alien children. Prior to 1975, each child residing in that state was guaranteed a free public education at his local school. Although a literal reading of the present statute does not prohibit undocumented children from attending public schools, the law was designed to effectively deny these children that opportunity by requiring them to pay tuition. As a result, undocumented children cannot enroll in the Houston public schools unless they pay $90.00 monthly tuition. Similarly, in the Austin Independent School District, an undocumented child must pay tuition ranging from $1300 a year for elementary students to $1728 a year for senior high school students. Since most undocumented children in Texas are from poor Mexican families, the burden of tuition effectively prevents these children from attending school....[In addition it should be noted that]...the parents of undocumented children, like those of citizen and lawful resident children, pay their fair share for education through state and federal taxes.[168]

The statute has been challenged.[169]

Undocumented aliens are protected by the due process clause of the 5th and 14th Amendments; although, it remains unclear whether other explicit

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[165] Although child labor was outlawed in 1938 by the Fair Labor Standards Act (FLSA), an estimated 800,000 children under the age of 16 work in agriculture. Although the 1938 Act gave children protection from oppressive and exploitive employment by establishing minimum age requirements, less protection was given to children working in agriculture by stipulating a lower minimum age for them. Over forty years later, with agriculture ranked as the third most hazardous industry, a recent (October, 1977) Congressional amendment to the FSLA has lowered the minimum age for the employment of children in agriculture to 10 years old. Triangle Friends of the United Farm Workers, Information/Action Paper on Child Labor in Agriculture, 1978. Reprinted with permission by the Association of Farmworker Opportunity Programs.

[166] Robert F. Kane and Felix Velarde-Muñoz, "Undocumented Aliens and the Constitution: Limitations on State Action Denying Undocumented Children Access to Public Education," Hastings Constitutional Law Quarterly 5 (Winter 1978), p. 462.

[167] Jim Bob Hensley, The Impact of Students from Mexico Upon Selected School Districts in Texas Counties Adjacent to the Mexican Border (The State Board of Education and the Texas Education Agency, September 1976), p. 101.

[168] Kane and Velarde-Muñoz, pp. 462-63.

[169] In 1977 this statute was challenged in court (Doe v. Plyler U.S.D.C., E.D. Texas, Tyler Division, No. TY-77-261-CA) and ruled illegal. However, the issue is not settled and the plaintiffs are waiting for a decision on the appeal from the Fifth Circuit Court. Similar challenges to free public education for the children of undocumented workers have been defeated in Nevada and Idaho, but the outcome in the state of California remains undetermined. Staff, Mexican-American Legal Defense and Educational Fund, San Francisco, California, interview held May, 1979.

or implicit constitutional rights of citizens extends to them.[170] This affects many migrant children as it is generally acknowledged that a substantial percentage of the undocumented labor force is employed in migrant agricultural work.[171]

In addition to discriminatory policies based on immigration status, the migrant student is vulnerable to the inflexibility of a public school system which does not accommodate children who register late in the year. Many are denied entrance.[172] Few efforts are made to accommodate the needs of those who do enter, as one migrant student describes it:

> There are problems, even for those of who go to school. Because our families are dependent on our helping with the crops, we are allowed to miss one month of school to pick peaches. But we miss out on the orientation to school. So often we are embarrassed and humiliated at school, even though we are always trying. In our class there was only one person who could speak English rather well, but he couldn't read. And the teacher would always call on him to read.[173]

Migrant students require flexibility in their educational program. Their schedules are as unpredictable as the crops which their families follow. Most migrants work the labor stream 6 to 8 months out of the year.[174] In Florida the majority of students spend an average of only 2 1/2 months in a school district.[175] Exhibit 5, which follows, combines several sources to produce a profile of the migrant child's travel schedule.

In some cases, the schools overtly penalize migrants for their migrancy. In one Florida school, migrant students are arbitrarily denied credit for school work done upstream and also are prohibited from doing make-up work to compensate for the loss.[176] In other cases, the inflexibility of administrative rules penalize these students; for example:

> Texas' University Interscholastic League (UIL) has been sued by two students who charge that the league's rules for high school basketball competition penalize students who are part of the mobile population. According to attorneys in the case, the regulations require students who move from one school district to another to

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[170] Kane and Velarde-Muñoz, p. 469.

[171] Hensley, p. 15.

[172] Children's Defense Fund, p. 17.

[173] Sultan and Enos, p. 92.

[174] David M. Cavenaugh et al., InterAmerica Research Associates, Migrant Child Welfare: A State of the Field Study of Child Welfare Services for Migrant Children and Their Families Who Are In-Stream, Home Based, Or Settled-Out: Executive Summary (Washington, D.C.: Department of Health, Education and Welfare Publication No. (OHDS) 77-30177, June 1977), p. 6.

[175] State of Florida, Department of Education, Florida Migratory Child Compensatory Program, Evaluation FY '77 (Tallahassee, Fl.: Florida Migratory Child Compensatory Program, 1978), p. 52.

[176] Valadez et al. v. Askew et al. will be discussed further in this FINDING under the subsection titled: "Limitations of the Migrant Education Programs."

Exhibit 5: Profile of Migrant Children's Travel Schedule - By Length of Each State's Migrant Labor Season and Number of Title 1 MEP Students Enrolled as Current Intrastate/Interstate Migrant

9-12 Month Migrant Labor Season	Number of Title 1 MEP Students
Arizona	4,609
California	61,415
Florida	26,293
Idaho	4,633
Kansas	1,502
Montana	985
New Mexico	3,786
North Carolina	6,164
Oklahoma	2,420
Oregon	4,508
Pennsylvania	1,469
Puerto Rico	2,192
Texas	90,657
Washington	11,308
Total = 14 states	221,941

77% of National Total

Note: As pointed out in the text, students are so severely underrecruited that these figures can be doubled. In addition, current migrant families enrolled in the MEP work a 9 to 12 month labor season. These figures do not reflect the extensive intrastate travel. Nationally 40% of the current migrants only travel within the state. Among the states with a 9 to 12 month season, 39% of the MEP students do not leave the state, but do travel between school districts.

Source: Lillesand, David, Kravitz, Linda and McClellan, Joan. An Estimate of the Number of Migrant and Seasonal Farmworkers in the United States and Commonwealth of Puerto Rico. Legal Services Corp.: May, 1977. (Appendix A of this report.)

Exhibit 5 (cont.)

6-8 Month Migrant Labor Season	Number of Title 1 MEP Students
Alabama	1,699
Colorado	3,549
Connecticut	409
Delaware	763
Illinois	1,965
Indiana	3,697
Iowa	201
Kentucky	2,770
Massachusetts	7,243
Michigan	9,242
Minnesota	4,095
New Jersey	1,309
New York	3,168
Ohio	6,064
Utah	628
Virginia	978
Wisconsin	1,875
Total = 17 states	43,655

15% of National Total

5 Months or Less Migrant Labor Season	Number of Title 1 MEP Students
Arkansas	4,609
Georgia	3,055
Louisiana	1,519
Maine	2,768
Maryland	1,013
Missouri	1,974
Nebraska	912
Nevada	308
New Hampshire	--
North Dakota	1,963
South Carolina	1,392
South Dakota	46
Tennessee	666
Vermont	202
West Virginia	210
Wyoming	726
Total = 16 states	21,363

7.5% of National Total

National total = 47 states 286,959 Students*

* No MEP in Hawaii, Alaska, or New Hampshire

sit out one year of basketball. Students who arrive in their home districts later than the first two weeks of school have to wait 30 days before they can participate.

Crystal City High School, with a predominantly migrant enrollment, was declared ineligible for its district championship and barred from competing in regional and statewide tournaments for two years because it allowed two students to play in violation of the UIL rules. One played even though he had transferred to the district that year and the other was permitted to play even though he did not start school until mid-November.

The two students who were permitted to play filed suit against the UIL in federal court Dec. 14 charging that the regulations violate the 14th Amendment. Attorneys for the students say the regulations interfere with a student's right to travel and with the right to privacy and to accommodate family relationships. They also charge that the rules penalize students who are forced to miss competition by reducing their chances for athletic scholarships and their opportunities to compete at the college or university level. The case is Jesse Garcia v. UIL.

A similar suit against the UIL is in state court, challenging the rule that students who move into a new school district must sit out a year of basketball. In the case of John Sullivan v. UIL, the state trial court ruled for the UIL in late November, on the grounds that a student does not have a legal right to participate in athletic competition.[177]

However, it is not only migrant agricultural workers who travel during the school year. There is a high mobility factor between school districts among low-income families in general.[178]

Clarification is needed of the responsibilities of the public school system to migrants as well as to other disenfranchised students. Educational programs targeted for migrant students were designed to provide activities designed to meet the special needs of migrant students and to supplement local funds to alleviate the financial stress which the influx of migrant students puts on local school systems. In addition, these programs would seem to promise some flexibility and sensitive educational programming, but, this relief has not been forthcoming.

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[177] Virginia Robinson, ed., "Migrant Students Go to Court Over Discriminatory Policies," Education Daily 12 (Capitol Publications, Inc., January 5, 1979), p. 3.

[178] Ibid., p. 4.

Limitations of the Migrant Education Programs

By virtue of the law and tradition, education is a state responsibility. Even though it is not a federal responsibility, educational policy and government actions have been intertwined through civil rights enforcement and program funding.[179] Federal aid to lower education dates back to the early 1960's.[180]

> About eight percent of the nation's lower education expenditures are borne by the federal government. These expenditures, however, are highly targeted, and flow to specific populations for specific purposes. Thus the federal role is far more important than the eight percent figure suggests.
>
> The lion's share of federal expenditures are categorical, and because of this, federal funds are not always absorbed as a part of the regular ongoing education program.[181]

Due to their low income and ethnic minority status, migrant students are eligible to participate in most of the compensatory education programs.

Although no data is available which would identify program participation, it is generally acknowledged that migrants are excluded by their travel schedule. Budgeting for the programs is done on the basis of fullyear participation, so generally the limited program slots have been filled before the migrant even enters the local school system. Further, there are no mechanisms for reaching out and pulling in transient children. The only programs which target their efforts to serving the unique needs of migrant students are the federally-funded migrant education programs. The four categorical migrant education programs are outlined in Exhibit 6 on the following page.

Since the Title I MEP services the most migrant children, this program will be the focus of this review on the limitations of the categorical migrant education programs. Basically, the shortcomings, in meeting the equal educational opportunity needs of migrant students, lie with the Program's failure to identify eligible students and/or service them with appropriate programs.[182] The purpose of this review is to indicate the problems inherent in any discretionary educational programs, not to isolate the shortcomings of the Title I MEP.

Title I MEP has failed to identify countless migrant students. One estimate projected that 231,000 or almost one-third of the eligible

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[179] Chicano Education Project, Denis P. Doyle, "The Federal Government and School Finance Reform," p. 14.

[180] Ibid.

[181] Ibid.

[182] Schunack, ed., Mark Masurofsky, "The Title I Migrant Program: Passivity Perpetuates a Non-System of Education for Migrant Children," pp. 11-24. Other problem areas, which are beyond the scope of this paper, are reviewed thoroughly in this article. These include the Program's grossly inadequate fiscal controls and Program monitoring as well as the failure to issue regulations until 1978. For other excellent discussions see: Richard Feller, "Strengthening the Federal Title I Migrant Education Program," Harvard Journal on Legislation 10 (December 1972), pp. 41-73, and the U.S. Congressional Hearings 1977.

Exhibit 6: Migrant Education Programs

1. The High School Equivalency Program (HEP) was designed in 1967 to assist the migrant high school dropout, aged 17 to 23, to pass the General Educational Development (GED) examination. These HEP projects were established at university campuses to remove the school stigmas which the students might face in a public high school. Approximately 1,000 students are enrolled in HEP each year.[a] It is funded by the Department of Labor (DOL).[b]

2. DOL also funds the College Assistance Migrant Program (CAMP). CAMP provides comprehensive educational and supportive services to assist migrant students complete a four-year college degree. Currently less than 500 students are enrolled in the program.[c]

   There are 14 HEPs and 5 CAMPs funded at a cost of $5 million.[d]

3. Migrant Headstart Programs were started in 1965 to provide quality pre-school services tailored to meet the needs of migrant families. It is administered by the Indian and Migrant Program Division (IMPD) of the Administration for Children, Youth and Families of HEW. In 1976 5,454 children participated in the program. IMPD estimates that only 2% of the eligible children are serviced.[e]

4. The first and largest program is the Migrant Education Program (MEP) administered under the provision of Title I of the Elementary and Secondary Education Act (ESEA).[f]

   In FY1977, $130.9 million in Title I funds were granted by the Migrant Program Branch of the U.S. Office of Education to 46 States and Puerto Rico to operate MEPs in grades K-12. The number of migrant children enrolled in the programs, which are currently operated by 47 states in more than 2,900 school projects has grown from 80,000 in 1967 to approximately 660,893 in 1978.[g]

   Title I funds may be granted to state education agencies, which either provide the services directly or through local education systems; or they may be granted to other public or non-profit private agencies.

   The programs include preschool education and the development of vocational, academic, and communication skills; as well as provide such supportive services as medical care, resource coordination, etc.[h]

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[a] David M. Cavenaugh et al., Migrant Child Welfare: A State of the Field Study of Child Welfare Services for Migrant Children and Their Families Who Are In-Stream, Home Based, or Settled-Out: Executive Summary, Inter-America Research Associates (Washington, D.C.: Department of Health, Education and Welfare, Publication No. (OHDS) 77-30177, 1977), p. 15.

[b] President's Commission on Mental Health, Task Panel Reports Submitted to the President's Commission on Mental Health, Vol. III, Appendix (Washington, D.C.: U.S. Government Printing Office, 1978), pp. 1275-1276.

[c] Ibid.

[d] "Recommendations on Migrant Education and the Expansion of College Assistance Migrant Programs and High School Equivalency Programs," Submitted to the Sub-Panel by Jacqueline Hardy, Executive Director, College Assistance Migrant Programs, St. Edward's University, Austin, Texas, November 28, 1977.

[e] President's Commission on Mental Health, pp. 1272-1273.

[f] Title I ESEA was amended in 1966 to include the children of migratory agricultrual workers and then amended again in '74 to include the children of migratory fishermen.

[g] Interview with Chief of Migrant Education Branch (Title I MEP), Office of Education, Washington, D.C., November, 1978.

[h] President's Commission on Mental Health, p. 1269.

children are not enrolled in MEPs.[183] Another source puts this estimate at 50%.[184] In part this is due to the fact that there are numerous school districts which have no MEP. In California, for instance, it has been estimated that 3,500 to 4,000 eligible students are not served in one county alone.[185] It has been projected that 46,518 children, 58% of those eligible, are not enrolled in the Texas MEP.[186] Most Program evaluations have been critical of this severe underrecruitment.

It should be noted that enrollment in the MEP is not the equivalent of receiving educational services. Enrollment means the student's individual education and health record are entered into the national Migrant Student Record Transfer System (MSRTS), the Program's central computerized data bank, in an effort to make this information readily available to the appropriate MEP staff. State enrollment numbers are also used by the federal Title I MEP office to allot funds. In other words, the MEP monies are distributed to the states according to the number of students which they enroll, not the number which they actually serve.[187]

By their own admission, the States do not serve all the students they enroll. In 1977, the MEP enrolled a total of 401,280 children of migrant agricultural workers and fishermen. Only 49% of those enrolled in the MEP were served.[188] These figures indicate that only 25% of the eligible migrant students population is identified and served by the MEP. In addition, it is important to recognize that the MEP is a discretionary program, so migrants do not have any legal or civil right to Program participation.

For those who are served, the MEP has failed to design an adequate educational program oriented to the cultural and linguistic conditions of the migrant student.[189] For instance, the Program has failed to ensure that the linguistic needs of their students are met. In some MEPs,

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[183] President's Commission, p. 1270.

[184] U.S. Congress, House Committee on Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, Hearings on H.R. 15 to Extend for Five Years Certain Elementary, Secondary, and Other Education Programs, Part 17: Title I, State Migrant Program (Washington, D.C.: U.S. Government Printing Office, October 12, 1977), p. 325.

[185] National Council of La Raza (NCLR), California Migrant Education: An Assessment of the Implementation of the Title I Migrant Education Program (Washington, D.C., July 1978), p. 36.

[186] NCLR, Texas, p. 110.

[187] The SEA receives Program funds per capita and then distributes these monies throughout the State according to its evaluation of the LEAs' MEP applications and self-assessed needs. The MEP funding system has also been criticized because all funds awarded to the MEP come from the total Title I allocation. The Program receives its funding "off the top" so more students enrolled in the MEP means less monies for the Title I regular program. This tends to create competition between the Title I general programs and the MEP.

[188] NCLR, Florida Migrant Education: An Assessment of the Implementation of the Title I Migrant Education Program (Washington, D.C., May 1978), p. 53.

[189] There are exceptions, of course. Some innovative Program ideas have been developed by the MEP such as the California Mini-Corps and the Florida Learn and Earn projects:

> The California Mini-Corps is a program that recruits and trains migrant high school graduates to work as teacher aides and counselors who follow the migrant students in the stream. The Florida Learn and Earn program consists of prevocational on-the-job training for migrant high school students in skills such as auto mechanics, paramedic training, assembly line techniques and others, with small remuneration.

Saavedra-Vela, p. 12.

students are still docked points for speaking Spanish in the classroom.[190]

The only source of data on the educational needs of migrant students is the MSRTS. This data bank stores detailed education and health records and makes the information readily available to any Program throughout the country which enrolls the student. However, although over 80% of the enrollees are Hispanic, the MSRTS has never collected information which would indicate language ability. Language ability information is critical for effective Program planning.[191]

A recurring criticism of the MEP has been its failure to provide bilingual/bicultural instruction, teachers and materials. There are no national statistics on the percentage of MEP students receiving language instruction or the number of language-minority staff employed by the Program. Most states do not require that MEP staff be identified as bilingual/bicultural.[192] Judging from the on-site Program reviews which have been conducted and as reiterated in a 1978 review of the Texas MEP, which serves 33% of the total 1977 MEP enrollment, the number of migrant students receiving language instruction is low:

> ..,[The study] found local MEPs are failing to provide students with multi-cultural education. Regardless of the special priority which the State places on multicultural education in its funding application, bilingual/bicultural education is not offered to MEP students. Bilingual materials are usually not available, and even when they are available the monolingual teachers choose not to use them. One MEP teacher aide stated that:
>
> > As far as I know we have the bilingual materials in our school building but they don't want to use them because they don't have any bilingual teachers.
>
> The use of Spanish is not encouraged in most projects. [The study] interviewed prekindergarten staff who complained that:
>
> > The children don't speak English, but the [monolingual] teacher gets angry when I speak it [Spanish] to them.
>
> Often aides have been instructed to use Spanish only if translation is necessary for the student's comprehension. The bilingual/bicultural aides are not developed as a bilingual resource.

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[190] NCLR, Florida, p. 47

[191] The Title I MEP is now in the process of developing a uniform skills recording device for the Program which will include bilingual assessment. Uniform skills records will be entered into the MSRTS and greatly alleviate the current problems associated with the nearly 2,000 different testing instruments used on migrant students. Rivera interview.

[192] For example, in Texas:

> State or regional statistics have not been compiled to determine the number of bilingual/bicultural staff employed as local MEP staff. The LEA funding application also does not require that the LEA identify whether the staff are bilingual/bicultural. Nor has the State made the hiring of bilingual/bicultural staff a program priority except for the position of teacher aide. For this position the MEP administrative guide indicates that: "Bilingual teacher aide applicants should be given primary consideration for employment in classrooms where needed." NCLR, Texas, p. 56.

> Except in those regions bordering Mexico, [the study] found that the overwhelming majority of the MEP teachers are monolingual. This severely impedes the program's ability to deliver bilingual/bicultural education.
>
> Further, Title VII funds allotted to LEAs have been severely cut back. In its stead, Texas offers a State bilingual program, LESA (Limited English Speaking Ability). However, funds for this State bilingual program are inadequate. LESA allots [school districts] $25 per student, while Title VII funds had been granted on a needs basis. ESC and local project staff stated that the LESA funds are insufficient to provide even a minimum of bilingual/bicultural services.[193]

When hired, bilingual staff are typically employed as support staff rather than as teachers. In addition, very few migrant workers are employed by the Program.[194] Even in those local Projects which do offer bilingual instruction, the culture and language of the Hispanic migrant student often is not reflected:

> [One study] found that few if any of the bilingual materials used in Florida were relevant to the vocabulary of migrant children. Bilingual materials were written in Castilian or Cuban Spanish with the majority of the vocabulary being irrelevant to the Spanish spoken and understood by Mexican-American children from Mexico and South Texas....
>
> [This study also found] that the video tape "Jimmy and Susie" kits used in the early grades for Spanish language instructions were in Cuban Spanish. Many tutors felt the Mexican-American children could not relate to Cuban Spanish, so they used the English version in order to avoid confusing the kids.[195]

No major revision has been made in instructional materials or methodologies to accommodate the unique needs of the migrant child.[196] Regular school curricula are geared to year-round residents and have a built-in continuity and sequence. Such materials lack the flexibility to meet the attendance schedule of migrant students. New materials and teaching techniques are sadly missing.[197]

In addition, the school districts continue to serve the needs of their system rather than the individual student. A school district

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[193] NCLR, Texas, pp. 44-45.

[194] NCLR, Texas, Florida, California; Ohio Migrant Education: An Assessment of the Implementation of the Title I Migrant Education Program (Washington, D.C., May 1978); Oregon Migrant Education: An Assessment of the Implementation of the Title I Migrant Education Program (Washington, D.C., June 1978).

[195] NCLR, Florida, p. 41.

[196] Schumack, ed., José Cárdenas, "Education and the Children of Migrant Farmworkers: An Overview," p. 7.

[197] One exemplary effort to delineate flexible bilingual programs specifically for migrant children is Beth Arnow, Bilingual/ESL Programs for Migrant Children (Austin, Tx.: National Educational Laboratory Publishers, 1977). Detailed in RECOMMENDATION 3.

which enrolls MFWs is not under any obligation to accommodate these students with flexible administrative policies. As a consequence, dysfunctional school policies remain intact, such as regulations regarding late entries and early withdrawals. Recently in Lake County, Florida these dysfunctional attendance regulations were challenged in court. In the case, Valadez v. Graham,[198] nine migrant students enrolled in the high school were subject to policies which required that:

> ...students who miss five or more of the first weeks of school be given failing grades for the first quarter, regardless of their ability, effort, or performance, and which deny migrant students credit for course work done in northern schools without standards for determining the acceptability of this work, without reasons given for decisions in individual cases, and without affording students opportunities to contest these determinations....The school provided them no instruction which might have enabled them to learn the material which they had missed and, in some cases, actually prohibited Plaintiffs from attempting to make up missed work.
>
> As a result of Groveland's failure to provide Plaintiffs make-up instruction and Groveland's punitive attendance/grading and course credit policies, Plaintiffs - all of whom have demonstrated ability to do average, and in some cases superior, academic work - have received failing grades, or have been denied credit for course work in northern schools, or both.[199]

In short, the high school accepts federal MEP monies and yet maintains school policies which virtually assure that its migrant student population fails academically. On October 11, 1978, the District Court dismissed the contention that the students maintain a private right of action under the Title I MEP and claimed that there is no explicit authority for it.[200] The other merits of the case remain undetermined because the trial has been postponed until Fall, 1979. The plaintiffs argue that they are entitled to make-up instruction under Title VI's prohibition of discrimination on the basis of national origin and the Title I MEPs obligation to meet the special educational needs of migrant students.[201]

Evidently, a MEP does not ensure that the equal educational opportunity needs of migrant students are met. In part this is due to the inherent limitations of a discretionary program.[202] Consequently, program participation and/or policies can not be forced upon any local school district by the state or federal agencies, and in turn, the equal educational opportunity of the migrant population remains unrealized.

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[198] Valadez et al. v. Graham, No. 78-16 (U.S. District Court, Middle District of Florida), Filed October, 1978.

[199] (In fact) a student receiving a zero for the first quarter can do "A" work for two of the remaining quarters and "B" work for the other remaining quarter, and still receive an "F" for the year. Valadez v. Graham, No. 78-16, Memorandum in Support of Plaintiffs' Motion for Reconsideration, pp. 2, 9.

[200] Marcia Bove, Attorney, Florida Rural Legal Services, Winterhaven, Fl., interview held November '78.

[201] Daniel Schember, Attorney, Gaffney, Anspach, Schember, Klimaski and Marks, P.C., Washington, DC, interview held May, 1979.

[202] Feller.

FINDING 4: BILINGUAL EDUCATION/DESEGREGATION Desegregated/bilingual settings do not ensure that the equal educational opportunity needs of Hispanic migrant children will be met.

Integration and bilingual instruction are two compatible aspects of an educational strategy sharing the common goal of equal educational opportunity.[203] As a national-origin minority as well as a language minority, Hispanic migrant students expand their equal educational opportunities in an integrated school which offers bilingual programs. Unfortunately, FINDINGS 1, 2 and 3 indicate that the vast majority of Hispanic migrant children are not experiencing a desegregated and bilingual education. Sites identified by the project in Texas and Idaho reiterate this reality.

Segregation and monolingual instruction continue in Raymondville, Texas whose school system serves a student population which is 88% Mexican-American, one third of whom are migrants.[204] Parents filed a complaint in 1976 alleging various acts of discrimination. Mexican-American children do not attend school with any Whites until the sixth grade,[205] and the school has a history of de jure dual school system.

> [One teacher] who taught in the migrant school until 1976 testified that the Mexican-American migrant kids were segregated from regular classes, and Anglo kids or mixed classes did not attend functions for migrant children.[207]

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[203] USCCR, Desegregation...A Status Report, p. 25.

Although desegregation and appropriate language instruction are two complementary educational goals, the implementation of bilingual programs in a desegregated school system has created logistical problems:

> The problem...is an implementation conflict that arises when both school desegregation and bilingual education must be addressed simultaneously by a local education agency [LEA]. The problem is further aggravated by the chronological, developmental, and hierarchial considerations which set these two curricular measures apart in terms of their respective policy status....[The] problem arises when we try to assess the federal government's direction in determining at which point can bilingual education curricula become an obstacle to desegregation. All we find is a string of loosely articulated guidelines scattered over several documents. Even when we can pinpoint some kind of directive, we are still at the mercy of the courts. Furthermore, these "guidelines" have different degrees of enforceability, some of them being tied down to federal financial assistance to LEA's, other being contained in executive documents with varying degrees of force of law. The federal government has placed the responsibility of establishing the delicate balance between bilingual education and school desegregation on the LEA's, even though the double standard that exists between these two curricular trends was the result of federal actions. The federal government's position can be summarized simply by saying that bilingual education is good and school desegregation is a must; but that the "ecology" of educational policy, that delicate balance needed to harmonize the two, remains a local responsibility. Hilan, pp. 2 and 32.

On that local level, reality points to the need for special interest groups to make their needs, such as bilingual instruction, visible in order to safeguard them.

[204] Castaneda et al. Plaintiffs v. Pickard et al. Defendants, Civil Action No. 76-B-24, in the U.S. District Court for the Southern District of Texas, Brownsville Division, Plaintiffs' Trial Brief, 1978, pp. 4-5.

[205] Ibid., p. 3.

[206] Ibid., p. 5.

[207] Ibid., p. 6.

In addition, the school system has failed to implement an adequate bilingual program.[208] Children are even punished for speaking Spanish in school.[209] Yet, in 1978, the court ruled that there was insufficient evidence to indicate a violation.[210] No ruling has been made on the appeal which was filed,[211] so the segregation and inadequate language programs continue.

In Burley, Idaho a 1974 HEW/OCR review found at least one instance of migrant children being bused past an exclusively White school to a more distant Chicano school.[212] This practice was eliminated through a desegregation plan formulated in 1976 which included provisions for appropriate language instruction.[213] However, a 1978 review found that the now desegregated school district still fails to meet the students' bilingual needs or address the discriminatory disciplinary treatment of Mexican-American students.[214]

As part of the Hispanic population, Hispanic migrants are subject to the same barriers to desegregation and bilingual education as their ethnic counterparts. These barriers derive from the persistent inconsistencies in the definition, enforcement and monitoring of desegregation/bilingual programs. However, migrants are not promised relief by remedies formulated for Hispanics. As outlined throughout the FINDINGS, even when Hispanics are served in a desegregated/bilingual setting, migrants are not assured a desegregated/bilingual education. There is no clear legal obligation or judicial precedents to command that migrants' educational interests be considered. In addition, the larger Hispanic population cannot be expected to represent migrant interests as migrants live in rural areas while 85% of all Hispanics live in metropolitan areas.[215] As a result, the existing desegregation/bilingual program implementation mechanisms do not identify the migrant population outside the migrant education program and therefore do not target the following migrant needs for attention:

- Prevention of classroom segregation, either in lower tracks or categorical migrant programs;
- Maintenance of categorical migrant education programs;[216] and,
- Participation in appropriate language programs.

With the proportionate increase of migrants who are Hispanic, there has been a corresponding increase in the number of migrant students entering

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[208] Ibid., p. 22.

[209] Ibid., p. 2.

[210] Castaneda et al., Memorandum, p. 7.

[211] James Herrmann, Lawyer, Texas Rural Legal Services, Harlingen, TX, interview held May 1979.

[212] USCCR, Desegregation,..A Status Report, p. 33.

[213] Ibid., pp. 33-34.

[214] Ibid., p. 34.

[215] Neil R. Peirce and Jerry Hagstrom, "The Hispanic Community - A Growing Force To Be Reckoned With," National Journal (April 7, 1979), p. 549.

[216] One distinct vulnerability of the migrant students in a desegregating setting is insensitive dispersal throughout the school system. Two sites were located in which the migrant education programs were kept intact by local school officials during the desegregation process, See Appendix G.

the school system.[217] This trend promises to exacerbate the equal educational opportunity needs of migrant students with both an increase in migrant students and LES students.

A desegregating school district has the potential to force a school system to serve its migrant population more effectively. A desegregation plan could be used as a vehicle to assist MFWs. In the past, desegregation actions have directed schools to survey their student population for ethnic minorities and LES students.[218] "Migrancy" could be included in this assessment as an additional identifier and could be used to assign migrant students to schools which are responsive to their equal educational opportunity needs.

On the other hand, even if migrant needs are targeted for protection within a desegregated/bilingual school system, there is still no guarantee of an equal educational opportunity for Hispanic migrants. Realities in the classroom indicate that even when desegregation and bilingual instruction are provided, they have not proven to be the vehicles necessary to formulate an equal educational opportunity for migrant students. Full access, participation and equity demand more comprehensive educational reform than the current responses of desegregation and bilingual programs. These two responses do not address other facets of the equal educational opportunity needs of migrants such as the following:

- Sensitive adminstrative and academic policies, (See FINDING 3 and RECOMMENDATION 2);
- Free public education for all children, (See FINDING 3 and RECOMMENDATION 4);
- Supportive services;[219] and,
- Flexible bilingual/bicultural educational programs and materials, (See FINDING 2 and RECOMMENDATION 3).

Most recommendations for improving the equal educational opportunity of migrants are directed to the improvement of categorical migrant education programs.[220] As reviewed in FINDING 3, the migrant education programs cannot be assumed to be meeting these needs. In part, this is due to the inherent limitations of a discretionary program. Moreover, this is due to the ethnocentric context in which educational reform is being asked to evolve:

> Those who fail are most likely to be different from the mainstream Anglo norms....by definition the "unacculturated". A primary

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[217] Klumpp, pp. 35 and 63.

[218] For example, desegregation actions in New York City and Los Angeles.

[219] Support services must be an integral component of a migrant program. A child who is not healthy and does not have a well-balanced diet will not learn well in the classroom. One study recommended that immediate attention be given to the possibility that nutritional defects, health problems and/or ingestion of toxic substances may be causally realted to gross motor retardation in migrant students. Klumpp, p. 49.

[220] For example, recommendations from the following organizations: Education Commission of the States' Interstate Migrant Education Project, La Cooperativa Campesina, National Association of Farmworker Organizations, National Council of La Raza, and National Education Association.

> goal of early childhood programs has often been to try to eliminate these differences, to change the children and/or their families to fit the educational system they will enter. An alternate possibility....is to accept and build upon individual and social differences, to change the educational system to fit linguistically and culturally diverse children.[221]

There is a growing realization that diversity among students is to be valued and has survival value in a constantly changing society.[222] Until the educational system becomes responsive to the unique psychodynamics of each student, migrants will continue to epitomize the matrix of barriers to equal educational opportunity of all distinct children.

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[221] Saville-Troike, p. 35.

[222] Royal T. Fruehling, "Multicultural Education as Social Exchange," Phi Delta Kappan (January 1977), p. 398. See also William Greenbaum, "America in Search of a New Ideal: An Essay on the Rise of Pluralism," Harvard Educational Review 44 (Cambridge, Mass.: August 1974).

V. RECOMMENDATIONS

It is not within the scope of this project to make all the recommendations necessary to insure an integrated and linguistically responsive school setting. It is understood that Hispanic migrants are subject to barriers to equal educational opportunity as members of the larger Hispanic population. As outlined in this report, these barriers stem from the persistent inconsistencies in the definition, enforcement and monitoring of desegregation/integration and language minority programs. These issues demand resolution if the promise of equal educational opportunity is to be realized. For example, alternative models for the collection of school segregation data could be developed which include organizational considerations, policy discrimination, administrative considerations and instructional patterns.[223]

However, even after the issues of desegregation and bilingual education are resolved for Hispanics, the educational remedies formulated will not guarantee equal educational opportunity for migrant students. Consequently the recommendations which follow will focus on the needs of the Hispanic migrant student and how to maximize her/his equal educational opportunities.

The RECOMMENDATIONS are numbered, however, the numbers do not correspond to those of the FINDINGS.

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[223] Outlined in Marzell Smith and Charles O. Dziuban, "The Gap Between Desegregation Research and Remedy," Integrated Education 15 (November-December, 1977).

RECOMMENDATION 1: In order to be protected from disciminatory actions, migrant students must be identified as "migrant" in all school settings.

Statistical visibility is policy visibility.[224] Unless migrants are identified as "migrant", they will remain segregated from the school system or within it. They are particularly vulnerable to placement in segregated and/or remedial classes on the basis of their migrancy rather than their intellectual capacity. Such discriminatory school actions will remain unnoticed until a responsive monitoring mechanism is developed.

The OCR's Elementary and Secondary School Civil Rights Survey is the only national source of data on students in individual schools and school districts. This collection of data provides the most comprehensive assessment of the extent of students' segregation and provides the factual base for OCR's enforcement of antidiscrimination laws in education. However, the current OCR survey effectively bypasses the smaller and/or rural schools attended by migrants.[225] In addition, the survey does not require identification of migrant students apart from their national origin identity. An identification mechanism could be included to elicit this information as is currently being done for the handicapped student population. Unfortunately, the schools conduct their student assessment in September, a time at which many migrant students will be on the road or working in the fields. Consideration should be given to coordinating efforts with the MSRTS and to conducting a supplementary student assessment at a time targeted to include the peak local migrant population.

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[224] Congressional Representative Edward R. Roybal, Democrat-California, Chair of the Congressional Hispanic Caucus and Sponsor of the 1976 Roybal Act. Peirce and Hagstrom, p. 549.

[225] See The Children's Defense Fund study, OCR Survey, for extensive documentation on the current limitations with this data source, including the politics of implementation and the restricted number of schools surveyed.

RECOMMENDATION 2: National protective legislation and/or administrative directives are needed to protect the migrant's access to a public education.

The U.S. has failed to develop a comprehensive education program for migrants. The migrant student's access to a public education will be impeded until national protective legislation and/or administrative directives are formulated to define their educational rights. In order for any directives[226] to ensure an appropriate education for migrants, they must address the following needs:

1. Establishment of educational goals and expectations for migrant students which are the same as those for all students in preschool through postsecondary school;

2. Bimonthly identification and enrollment efforts by the school, including bilingual outreach;

3. Flexible multilingual/cultural educational materials and programs designed to meet the migrant's specific needs (See RECOMMENDATION 3);

4. Free transportation to and from school, which is flexible enough to accommodate special educational needs and extracurricular interests;

5. Specific definitions of LES ability and remedy as well as guidelines for "bona fide" grouping which include entry/exit criteria;

6. Individual educational plans developed and tailored to each student's needs,[227] at least in the homebase location;

7. Requirement of affirmative actions to hire current and former migrants as instructional staff and support personnel;

8. Development of programs which address the high drop-out rate with at least the following:

   - Follow-up from the school when a migrant student withdraws,
   - Income-earning opportunities for students, such as paid tutoring opportunities, in addition to,
   - Free education and/or day care facilities guaranteed for all migrant children from at least age three in order to meet the educational needs of these children as well as free their siblings from babysitting responsibilities which keep them out of school;

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[226] In determining an appropriate directive, the court could refer to the trust model to conceptualize the relationship between the student and the school. Due to the assumed inability of children to make decisions for themselves, traditionally they have been reduced to a dependent status and are treated as the "domain" of their parents, the schools or the state. The trust model provides an alternative framework, familiar to the courts, in which the student's rights could be protected - that is, held in trust, until the student is old enough to exercise them intelligently. In such a framework, the school, as trustee, would be obligated to act in the best interest of the student, the beneficiary of the trust. "The Rights of Chidlren: A Trust Model," Fordham Law Review 46 (March 78), pp. 695-696.

[227] An innovative feature of PL 94-142 designed to meet the educational needs of the handicapped student. National Advisory Committee on the Handicapped, "A Bill of Rights for the Handicapped," American Education (June 1976), p. 2.

9. Public announcements to inform migrant families of these newly-defined rights and efforts to include all family members in the education process;

10. Assurance that supportive services are readily accessible to meet the families' health, legal and housing needs;

11. Assurance that administrative policies are not dysfunctional and include interschool district credit transfers (perhaps using the existing MSRTS);

12. Development of an effective monitoring/enforcement mechanism which facilitates the migrant's capacity to trigger review of program compliance;[228]

13. Clarification of a student's "private right of action" in all federally assisted programs; and,

14. Specification that length of local residency, number of migrant students and their immigration status do not abridge these rights.

Ideally, such protection would be part of an umbrella legislation for migrants, as Section 504 is for the handicapped. In short this would prohibit discrimination against migrants, on the basis of migrancy, in any institution or activity receiving federal assistance, including all federally assisted schools, housing developments and other public services.[229] Adequate funds and enforcement mechanisms must be included to avoid those setbacks currently being experienced by the supporters of the handicapped legislation.[230]

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[228]Currently, beneficiaries of federal grant-in-aid programs have no effective way to trigger HEW review of state compliance with federal standards. Existing complaint procedures do not provide a publicized and convenient forum for resolving compliance problems. Feller, p. 61

[229]U.S. Department of Health, Education and Welfare, Office of Human Development Services, Your Responsibilities to Disabled Persons as a School or College Administrator (Washington, D.C.: U.S. Government Printing Office, 1978), p. 2.

[230]Randy Roach, "The Least Restrictive Environment Section of the Education for All Handicapped Children Act of 1975: A Legislative History and an Analysis," Gonzaga Law Review 13 (1978), p. 753.

RECOMMENDATION 3: Flexible multilingual/multicultural educational modules, materials and teaching strategies designed specially to serve migrant students should be developed and distributed.

Children from different ethnic groups possess distinct patterns of ability, learning styles and approaches to problem solving.[231] The abrupt discontinuity in the socio-cultural context between home and school, compounded by issues related to attitudes and behaviors from individuals representing the two socio-cultural contexts, have been cited as the probable root of the minority student's educational problems.[232] In order to overcome these conflicts, the educational system must develop mechanisms which respond to the needs of the individual student. The curriculum as well as the teaching methods and programs must respond realistically and with sensitivity to these differences. For example, a practical response to the needs of language minority students should include bilingual education materials designed for monolingual teachers because they are currently the vast majority of the instructional personnel in the school system.

Materials and teaching methodologies developed for the Spanish-speaking cannot respond to all the linguistic and cultural differences within that population. They probably would not recognize the linguistic and cultural nuances of migrant students or respond to their mobility with highly individualized instruction or self-contained flexible short-term learning modules.[233] Model materials, teaching strategies and programs are needed which address the migrant's language, history and culture in an affirming manner.[234] Moreover, such educational activities need to include exercises for sensitizing the school staff to the migrant culture and to the staff's own prejudices in viewing MFWs. Further, these models should be made readily available to all schools which serve migrants, not just those with a categorical migrant program.

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[231]For an extensive discussion of the need for an instructional program which is compatible with the characteristics of the learner, see Jose Cardenas, "Educational Issues Concerning Hispanic Americans," in which he identifies over 40 incompatibilities and groups them into the following five areas: poverty, culture, language, mobility and societal perceptions.

[232]Laosa, p. 26.

[233]Beth Arnow's Bilingual/ESL Programs for Migrant Children is one of the rare attempts to identify responsive programs for migrants. She recognizes that the individual's skill level must be quickly determined because teaching a skill that is inappropriate to the student's level is a waste of time which migrant children cannot afford. Further, she attempts to isolate several different ESL and bilingual education models which can be implemented for migrant children bearing in mind that these children are often not in one school long enough to establish the educational continuity which is an integral part of most language program models. For example, she recommends that a maintenance bilingual program could best be implemented in the homebase location because it is a site to which a majority of the same families return each year and in which loyalty to the mother tongue is strong.

[234]The materials should review the migrants' history, including union struggles as well as famous persons, such as the jazz musician "Leadbelly".

RECOMMENDATION 4: Access to an appropriate public education must be insured for all students regardless of immigration status.

Currently public education of the children of undocumented workers must rely on the courts for protection against discriminatory state regulations. This is because there is no federal statute which explicitly addresses regulation of the education of these children[235] or the children of documented aliens. However, federally-funded educational programs, including the migrant programs, make no distinction between the children of citizens, resident aliens or undocumented aliens. The implication is that no distinction is to be made among them for participation in these programs. Instead, eligibility is based on economic criteria and educational need.

In light of state legislatures seeking to deny undocumented children equal access to public education,[236] a clarification of the educational rights of these chidlren is warranted. Specific federal legislation prohibiting any state or school district from denying undocumented children equal access could resolve this issue if backed with an effective enforcement mechanism.[237]

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[235]Kane and Velarde-Muñoz, p. 502.

[236]Ibid.

[237]Ibid., p. 506.

RECOMMENDATION 5: Realistic advocacy mechanisms should be developed to define and represent the equal educational opportunity needs of MFWs.

Migrant workers are not members of a political constituency. As a small, isolated and transient group, they are virtually powerless. Migrants lack the visibility, political power and/or advocates necessary to assure that their educational interests are protected within the public school system. The parents of migrant students have little or no political base from which to operate because they have little or no representation on school boards or in legislatures. Yet, as evidenced in the FINDINGS, equal educational opportunity mandates are not self-fulfilling. Legislation without implementation does not remedy the equal educational opportunity needs of any student.

Although there is a heavy reliance on the judicial system to assure equal educational opportunity, the courts may not be the most effective agency to carry out such broad social remedies as desegregation. They are subject to political pressures as are the executive and legislative branches. In order for court decisions to be effective, public and political support are necessary. This support has been sadly lacking. In addition, the success of equal educational opportunity efforts ultimately rests with the local school dsitrict.

As outlined in Exhibit 7, changes will be facilitated by an increase in support from four forces: societal, organizational, group and individual. Realistic advocacy mechanisms should be developed to increase support from all four forces in order to protect the equal educational opportunity needs of MFWs. These mechanisms should include the following:

- Targeting the homebase states for the most intensive efforts to develop and support advocacy mechanisms.
- Development and support of interstate cooperation efforts.
- The ultimate goal of migrants' self-representation:

  Migrant parents and other MFW community members should be actively included in equal educational opportunity efforts as school staff as well as in equal opportunity compliance measures. For instance, the court can mandate that a form of notice be designed to inform non-present parents of the educational issues at stake in a judicial proceeding.

  The Education Amendments of 1978 (P.L. 95-561) now require migrant parent involvement in state and local advisory councils for the Title I MEP. However, this is not sufficient. Migrant involvement must expand beyond categorical "migrant" programs in order to assure that migrant equal educational opportunity needs are represented and met.

- Constituency building outside the migrant community itself; including education of the equal educational opportunity mechanisms that migrant interests remain unrepresented within their jurisdiction.

Exhibit 7: Outline of the Forces in Educational Politics

Areas of Educational Politics

Public Faces

MASS MEDIA

GOVERNMENT
- President
- Governor-Mayor
- Police & Fire Commissions
- Department of Public Works

ECONOMIC
- Industry-Business
- Chamber of Commerce
- Real Estate

MILITARY
- Army-Navy

RELIGION
- Council of Churches
- Catholic-Jewish

COMMUNITY
- Voluntary organizations
- NAACP-MALDEF
- Student law center

COURTS

Private Faces

BOARD OF EDUCATION

SUPERINTENDENT
- Cabinet

CENTRAL OFFICE
- Desegregation Officer
- Legal Counsel
- Middle Management
- Intergroup Relations Director

EDUCATOR ORGANIZATIONS
- NEA
- AFT
- NAESP
- NASSP
- AASA
- Noncertified

FEDERAL AGENCIES
- U.S. Office of Education
- HEW Office of Civil Rights
- Department of Justice
  - Community Relations Service
  - Civil Rights Division
- Equal Employment Opportunity Commission

STATE
- Department of Education
- Superintendent

SCHOOL SITE
- Principal
- Teachers
- Counselors
- Department heads
- Noncertified staff
- Students
- Parents

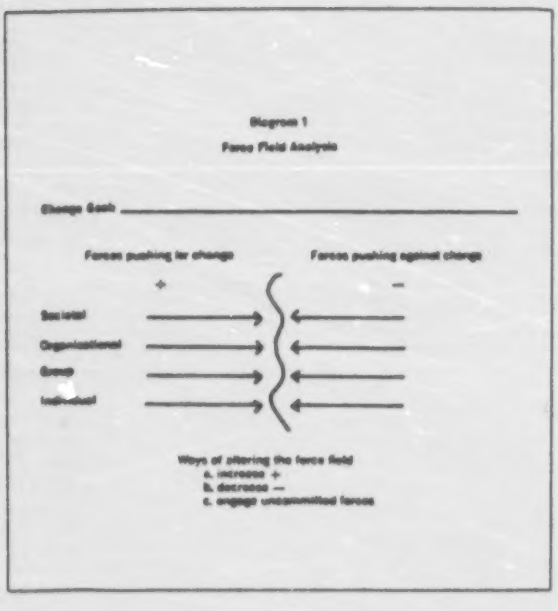


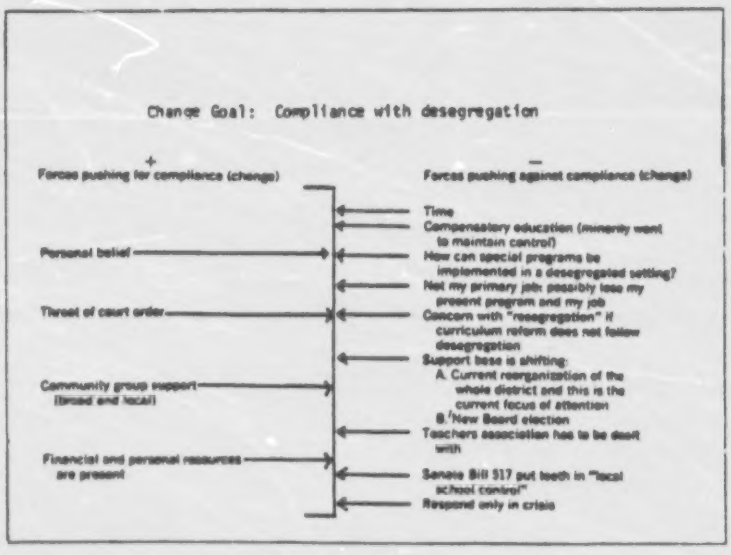
Diagram 1

Force Field Analysis

Change Goal: _____

Forces pushing for change (+)	Forces pushing against change (−)
Societal →	←
Organizational →	←
Group →	←
Individual →	←

Ways of altering the force field
- a. increase +
- b. decrease —
- c. engage uncommitted forces



Change Goal: Compliance with desegregation

+ Forces pushing for compliance (change)	— Forces pushing against compliance (change)
	← Time
	← Compensatory education (minority want to maintain control)
Personal belief →	← How can special programs be implemented in a desegregated setting?
	← Not my primary job; possibly lose my present program and my job
Threat of court order →	← Concern with "resegregation" if curriculum reform does not follow desegregation
	← Support base is shifting: A. Current reorganization of the whole district and this is the current focus of attention B. New Board election
Community group support (broad and local) →	
	← Teachers association has to be dealt with
Financial and personal resources are present →	
	← Senate Bill 517 put teeth in "local school control"
	← Respond only in crisis

Source: Smith, Kathleen, ed. Desegregation/Integration: Planning for School Change. A Training Program for Intergroup Educators. Washington, D.C.: National Education Association, 1974, pp. 40, 42 & 51.

- Public education efforts to foster understanding and support for and by the migrant community in order to assure that MFWs' equal educational opportunity needs are met:

  The local community must evolve the current perception of MFWs beyond that of expendable outsiders into one of viable members of the community. In turn, migrants must know their rights in order to protect them. Currently, guides developed to inform MFWs of their rights do not include information regarding equal educational opportunity rights.

The development of realistic advocacy mechanisms must occur in order to define and represent the equal educational opportunity needs of Hispanic migrant children.

VI. CONCLUSION

The overwhelming evidence indicates the exclusion, both physical and functional, of Hispanic migrant students from the public educational system. Available statistics document that these students are not realizing their potential within the school system and reflect equal educational opportunity needs which remain unmet. As outlined in this exploratory study, migrants do not create the problem. The pervasive observation of the study is that equal educational opportunities evade the majority of all linguistically and culturally diverse students. For Hispanic migrants, specifically, these findings include the following:

1. Hispanic migrant students do not experience desegregated school settings.

2. Few LES migrants receive appropriate language instruction;

3. The present system of public educational programs has failed to adequately address the equal educational opportunity needs of Hispanic migrant children; and,

4. Desegregated/bilingual settings do not ensure that the equal educational opportunity needs of Hispanic migrant children will be met.

In addition, with the proportionate increase in Hispanic migrants, there has been a corresponding increase in the number of migrant students entering the school system. This trend promises to exacerbate the equal educational opportunity needs of migrant students.

As a marginalized group within modern society, Hispanic migrant students epitomize the matrix of issues affecting the disenfranchised. Examination of their unmet educational needs reveals problems and unresolved issues whose repercussions spread far beyond the confines of the migrant population to others who share any of the migrants' marginalizing characteristics; mobility, rurality, socio-economic status, racial/ethnic origin or cultural/linguistic heritage. Evolving realities in the classroom indicate that even when a desegregated, bilingual setting is provided, they have not proven to be the vehicles sufficient to formulate equal educational opportunities for these students. Full access, participation and equity demand more comprehensive educational reform than the current responses in order to respond to the characteristics of the student population.

APPENDIX A: Title 1 Migrant Education Program
Enrollment by State, Age and Migratory Status

Source: U.S. Department of Health, Education and Welfare, Office of Education, Division of Education for the Disadvantaged, Migrant Branch, Internal document (Washington, D.C.). 1978.

1977 Title 1 Migrant Education Program Enrollment by Age and Migratory Status

Migrant Status	Ages (yrs.)					
	Under 4	4	5-17	18-21	+21	Total
1	22,179	10,401	154,603	5,077	168	192,968
2	5,655	5,700	103,823	1,552	39	116,769
3	6,320	5,792	136,880	2,252	32	151,276
4	265	73	1,804	17	0	2,159
5	56	52	1,396	26	0	1,530
6	179	97	2,774	44	0	3,094
Total	35,194	22,115	401,280	8,968	239	467,796*

*Note: There is no MEP in Alaska, Hawaii or New Hampshire. Also, the enrollment figures are estimated to be only half of the eligible student population.

Key: Status 1 = Current interstate agricultural migrant
2 = Current intrastate agricultural migrant
3 = Former agricultural migrant*
4 = Current interstate migratory fishing family member
5 = Current intrastate migratory fishing family member
6 = Former migratory fishing family member

*Section 116d.2 of the interim final Program regulations defines migrants as the following:

- "Currently migratory child" means a child (1) whose parent or guardian is a migratory agricultural worker or migratory fisherman; and (2) who has within the past twelve months moved from one school district into another (or, in a State comprising a single school district has moved from one school administrative area into another) in order to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity.
- "Formerly migratory child" means a child defined by section 122(a)(3) of the Act. That section provides that: "With the concurrence of his parents, a migratory child of a migratory agricultural worker or migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which s/he resides in the area served by the agency carrying on a program or project under this part." The term "area" in the preceding sentence means the legally prescribed geographic area over which a local educational agency or combination of such agencies exercises administrative control or direction.

Number of Students (aged 5-17) Enrolled in the Title 1 MEP
by State and Migratory Status: Calendar Year 1977

State	Status 1	2	3	4	5	6	Total
Alabama	930	769	321	220	0	163	2,403
Arizona	5,038	2,208	3,885	0	0	0	11,131
Arkansas	2,141	2,468	4,640	16	5	36	9,306
California	35,513	25,902	22,609	79	69	159	84,331
Colorado	2,929	620	1,566	0	0	0	5,115
Connecticut	337	72	1,840	2	3	1	2,255
Delaware	598	165	445	5	4	15	1,232
Florida	22,142	4,151	11,952	116	236	174	38,771
Georgia	1,152	1,903	1,593	6	1	0	4,655
Idaho	3,550	1,083	2,542	4	2	3	7,184
Illinois	1,669	296	860	0	0	0	2,825
Indiana	3,593	104	299	0	0	0	3,996
Iowa	156	45	178	0	0	0	379
Kansas	1,165	337	640	0	0	0	2,142
Kentucky	978	1,792	5,309	5	1	0	8,085
Louisiana	760	759	1,414	543	93	319	3,888
Maine	650	2,118	1,906	68	212	287	5,241
Maryland	959	54	110	0	6	7	1,136
Massachusetts	1,097	146	2,779	53	8	121	4,204
Michigan	7,686	1,556	2,233	0	0	0	11,475
Minnesota	3,979	116	283	0	1	0	4,379
Mississippi	712	1,377	3,740	278	139	366	6,612
Missouri	902	1,072	1,843	2	0	0	3,819
Montana	955	30	22	0	2	0	1,009

Status

State	1	2	3	4	5	6	Total
Nebraska	861	51	193	0	0	0	1,105
Nevada	253	55	415	0	0	0	723
New Jersey	693	616	1,414	22	28	43	2,816
New Mexico	2,032	1,754	2,257	0	1	0	6,044
New York	2,039	1,129	2,785	1	0	1	6,571
North Carolina	2,996	3,168	5,452	8	23	19	11,666
North Dakota	1,947	16	11	0	0	0	1,974
Ohio	5,964	100	211	0	0	0	6,275
Oklahoma	1,252	1,168	700	1	7	0	3,128
Oregon	2,904	1,604	2,319	4	0	0	6,831
Pennsylvania	1,069	400	998	0	0	0	2,467
Puerto Rico	1,701	491	4,323	179	52	750	7,496
S. Carolina	1,160	232	62	0	0	0	1,454
South Dakota	42	4	15	0	0	0	61
Tennessee	428	238	166	0	39	0	871
Texas	49,481	41,176	38,078	67	336	154	129,292
Utah	527	101	260	0	0	0	888
Vermont	46	156	86	0	0	0	288
Virginia	970	8	403	0	0	0	1,381
Washington	8,353	2,955	3,223	150	130	158	14,969
W. Virginia	199	11	91	0	0	0	301
Wisconsin	1,543	332	706	0	0	0	2,581
Wyoming	678	48	26	0	0	0	752
National	154,603	103,823	136,380	1,804	1,396	2,774	401,280

APPENDIX B: Article From The Migrant Educator

Source: Huss, John A., ed. The Migrant Educator. Vol. 4, No. 11. D.A. Lewis Associates, Inc.: Clinton, Md., November, 1978, pp. 3 & 6.

Information was solicited by AFOP through the following article which appeared in the November 1978 issue of The Migrant Educator. No response was elicited by the article's request for information pertinent to the project.

The Migrant Educator is a monthly publication and the only news publication attempting to provide a national information network among migrant educators. It is entering its fifth year of publication.

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VOLUME 4 NUMBER 11

THE MONTHLY NEWS PUBLICATION FOR EDUCATORS OF MIGRANT CHILDREN

GRANT AWARDED BY NIE TO SUPPORT LEGAL RESEARCH ON EQUAL EDUCATIONAL OPPORTUNITY OF HISPANIC MIGRANT CHILDREN

By Nora Olgyay

The Association of Farmworker Opportunity Programs (AFOP) was recently awarded a National Institute of Education grant for a six-month study of the interface between desegregation and bilingual education as they impact on Hispanic migrant children. This exploratory study will assess the current status of migrant students in such settings and develop policy recommendations.

Evolving realities in the courtroom and classroom indicate that decisions emanating from the original Brown desegregation decision do not address the educational inequities experienced by Hispanic children. AFOP maintains that desegregation has not proven to be the vehicle necessary to formulate equal educational opportunities for these students. Full access, participation, and equity demand more comprehensive educational reform than the mere redistribution of children within a school system.

Lau intervention has attempted to influence desegregation decisions to change educational practices in order to make the resulting remedy responsive to the characteristics of the population. The uneven results of Lau and/or Brown cases indicate that without further definition of program goals and models, the courts are ill-equipped to order the educational program development and monitoring of school efforts which are vital to meet the purpose of litigation: equal educational opportunity. In short, the problem facing the courts has been in framing Brown and/or Lau remedies without any clearly articulated policies.

Bilingual/bicultural education remains undefined. Is it an enrichment program or a remedial one? Should it be expanded beyond a transitional format? Clarification is still needed to define "sufficient" English language skills and develop criteria for identifying those skills among English-dominant speakers as well as limited-English-speaking students. It is this failure to define policies and set precedents which will create second generation desegregation problems which, in turn, will impact heavily on migrant farmworkers' children. For example, no one has addressed the issue of how many limited-English-speaking students are needed in order to trigger a Title VI violation, although the DHEW Lau Remedies require an obligation to offer bilingual/bicultural education only if there are 20 students or more of the same non-English dominant language. Until this particular issue is resolved, Hispanic migrant students will be distinctly vulnerable to uneven interpretations as they travel through various jurisdictions.

A related issue centers around residency. Is the time length of local residency a qualifying factor, or, is a small English-dominant West Virginia community obligated to provide bilingual/bicultural education to the fifty Hispanic migrant children enrolled in their school for only the month of September?

Other second generation desegregation problems have been identified by AFOP and will be examined further with an eye to relevant test cases, models for remedy, and policy/research questions.

Several court cases involving Lau and/or Brown have occurred in populations which are heavily migrant. However, up to this point, the search has not located any Lau and/or Brown decision with remedies identifying migrant students as a distinct population or a subgroup to cluster for services.

AFOP would welcome any information pertinent to this study. Please contact the author of this article at the Association of Farmworker Opportunity Programs, 418 C St., NE, Washington, DC 20002; telephone (202) 547-6632.

APPENDIX C: Chronological Outline of Key Court Decisions Affecting School Desegregation and Linguistically Distinct Students

In the citations which follow, the first number will refer to the particular volume in the law reporters; the words or letters that follow will represent the name of the series of the particular law reporter and the second number represents either the page, section and/or paragraph in the volume. U.S. refers to the official series of the U.S. Supreme Court, and the state cases may be designated by a geographical notation within the Federal Reporter system, i.e., S.E. 2d refers to the second series of the Southeastern reporter.

Plessy v. Ferguson, 163 U.S. 537 (1896)

The Supreme Court granted constitutional protection to deliberate racial segregation of Blacks and Whites with its "separate-but-equal" ruling regarding transportation. The Court explained that a race can be politically and civilly free even though legislation authorizes segregation of that racial group in all fields of social and economic endeavor. The segregation of Hispanics was not an issue.

Independent School District v. Salvatierra, 33 SW 2d 790 (Texas Civ. App., San Antonio, 1930).

Salvatierra charged that the Del Rio Independent School District was segregating Mexican-American children into separate schools merely because of their race. The school district won the case by arguing that the students' language deficiency warranted the separate schooling.

Mendez v. Westminster School District, 161 F. 2d 774 (9th Cir., 1947).

Mendez was one of the first court decisions addressing segregation of the Mexican-American. The Ninth Circuit Court ruled that separate schools with the same technical facilities do not satisfy equal protection laws, in its finding that segregation of Chicanos denied them due process and equal protection under the law. The ruling only addressed the illegality of segregation within the Ninth Circuit Court's jurisdiction: California.

Delgado v. Bastrop Independent School District, Civil Action No. 388 (W.D. Texas, 1948).

The Delgado decision held that the Bastrop Independent School District's practice of segregation was in violation of the Fourteenth Amendment of the U.S. Constitution. The Fifth Circuit Court demanded that separate classes for those with language deficiencies must be held on the same school campus, thereby forbidding school authorities in Texas to rationalize the separation of Chicano students into different schools based on the language deficiency proposition.

Hernandez v. Texas, 347 U.S. 475 (1954).

Hernandez held that Mexican-Americans are a separate class, distinct from Whites, and an identifiable ethnic group, although the courts have not always found discrimination. Prior to Hernandez Mexican-Americans were legally considered Whites. The equal protection clause did not apply in determining whether there was an unconstitutional exclusion from juries.

Brown v. Topeka Board of Education, 347 U.S. 483 (1954).

The Supreme Court declared that the "separate-but-equal" doctrine had no place in the field of public education and, therefore, state-sanctioned, racially-segregated dual school systems must be ended.

Brown v. Topeka Board of Education, 349 U.S. 294 at 301 (1955)

One year later in Brown II, the Supreme Court agreed to apply the 1954 antisegregation decree on a gradual basis, "with all deliberate speed". In addition, the Court did not specify how Hispanics were to be treated, which allowed the school districts to classify Hispanics as White. Consequently, in tri-ethnic settings of the post-Brown era, authorities often desegregated schools by mixing Blacks with Hispanics and continued to assign non-Hispanic Whites to all-White schools.

Hobson v. Hansen, 269 F. Supp. 401, 484-5 (D.C. 1967).

The court ruled that the school district's ability tracking system must be abolished because "in practice, if not in concept, it discriminates against the disadvantaged child, particularly the Negro." It was not until three years later, in Diana v. State Board of Education, that the discriminatory tracking of Hispanics was addressed.

Alexander v. Holmes, 396 U.S. 19 (1969).

This was the first major decision of the Supreme Court which rejected the Nixon administration's insistence on delay and ordered that desegregation plans be carried out at once. It prevented a collapse of the southern desegregation effort by requiring immediate desegregation once a violation has been found and ending the reliance on Brown II's ruling that desegregation proceed "with all deliberate speed."

Keyes v. School District Number One, 313 F. Supp. 61 (D. Colo. 1970).

This case established the right of "Hispanics" to the same desegregation remedies as those available to Blacks. The court stated that "Hispanos" should be treated as a separate minority group, but that bilingual education was not to be used as a substitute for their desegregation.

Ross v. Eckels, 434 F. 2d 1140 (5th Cir. 1970).

The court found that a remedy for a dual school system is not acceptable if it denies members of a third minority equal educational opportunity.

Diana v. State Board of Education, Civil Action No. 70378FP (N.D. Cal. Feb. 3, 1970).

The plaintiff contended that California's administration of intelligence tests resulted in a disproportionate number of Chicanos in Educable Mentally Retarded (EMR) classes. As part of the remedy, the court required that all children whose primary home language is not English must be tested for class placement both in their primary language and in English as well as with examinations which put less stress on verbal skills.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

This was the first of the urban desegregation cases. The Supreme Court accepted bussing as a permissible tool for desegregation and sustained a county-wide desegregation plan which required extensive bussing. In addition, the use of mathematical ratios for student assignment was accepted as a permissible starting point in the desegregation of a school system. The decision also recognized the federal courts' power as applicable only to de jure segregation.

U.S. v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971).

The court held Mexican-Americans to be a cognizable ethnic group protected by the Fourteenth Amendment, who had been discriminated against by the school system and the state. The federal court ordered the implementation of a comprehensive educational plan which specified:

- Vigorous recruitment of Mexican-American administrators and instructional staff;
- Curriculum which recognizes the value and cultural environment and language of the Mexican-American students;
- Language programs which develop and reinforce the student's primary and secondary language from early childhood through the 12th grade;
- Bilingual counseling;
- Intercultural awareness programs and ethnic studies courses;
- Establishment of multi-ethnic community councils to assist in the formulation and evaluation of the program;
- Development of a plan to insure the hiring and retention of competent bilingual/bicultural staff;
- Provisions for language and cultural awareness training;
- Appointment of bilingual/bicultural teachers for special education classes; and
- Appointment of an educational consultant team to develop a plan to evaluate the effectiveness of the bilingual/bicultural program and bi-annual reports to the Court and the parties on the progress of implementation.

Cisneros v. Corpus Christi Independent School District, 467 F. 2d 142, 147-49 (5th Cir. 1972).

The Cisneros case is significant because, for the first time, a court official declared Mexican-Americans to be an identifiable ethnic minority group protected by Brown for the purpose of public school desegregation. The major implication of this decision was to deny school districts from the following:

- Locating new schools in Black and Chicano neighborhoods;
- Bussing White students to avoid the minority group schools; and,
- Assigning Black and Hispanic teachers in disproportionately segregated schools.

Adams v. Richardson, 351 F. Supp. 636 at 638 (D.D.C. 1972).

The court found HEW guilty of subverting the civil rights law and ordered the agency to resume enforcement of desegregation. It found that 113 school districts had backed down on their promises to desegregate after HEW stopped enforcing the law in 1969 and that 74 of them were still illegally segregated.

Aspira v. Board of Education of the City of New York, 58 F.R.D. 62 (S.D.N.Y. 1973).

Puerto Rican and other Hispanic students in New York City sued the city Board of Education, claiming that the commitments of school officials to bilingual education remained largely unfulfilled. A judicial solution was not reached because the parties agreed to mediate the dispute. The resulting consent decree, delivered with the court's sanction but not a court order, required the school board to design and implement an improved method for assessing Hispanic students' skills in English and Spanish in order to identify those students with English language difficulties who, accordingly, have rights under Lau.

Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (D.N.M. 1973).

After a long drawn-out history in the courts, the decision supported the plaintiff's contention that the school district's monolingual instruction was not serving the Mexican-American's needs. After finding the violation, the court ordered the formulation of a bilingual/bicultural education plan which would accommodate the language, history and culture of Mexican-American students in Portales, New Mexico. Serna became one of the first cases in which a court mandated bilingual programs.

Lau v. Nichols, 414 U.S. 563 (1974).

The Supreme Court ruled that providing the same program for children who were linguistically atypical constituted discriminatory treatment and that the school district must remedy the situation. The Court did not specify or give an opinion for a remedy.

Bradley v. Milliken, 540 F. 2d 229 (6th Cir. 1976).

Following Milliken v. Bradley (418 U.S. 717 [1974]), Bradley II required bilingual/bicultural instruction as part of the remedy because the court ruled that there was a violation of the state law requiring bilingual programs; however, no finding was made of illegal discrimination against Hispanics.

Brown v. Weinberger, 417 F. Supp. 1215 (D.D.C. 1976).

Once again the court found HEW guilty of intentional nonenforcement of the Civil Rights Act of 1964 by continuing to financially subsidize unconstitutionally segregated schools in the North.

APPENDIX D: Summary of Mexican American Civil Rights Activities after World War II

Source: Orfield, Gary. Must We Bus? Segregated Schools and National Policy. Washington, D.C.: The Brookings Institution, 1978.

Summary of Mexican American Civil Rights
Activities after World War II

Mexican-Americans, lacking political power, continued the battle in the courts. The campaign was first led by the American GI Forum, a Chicano organization set up after World War II that was particularly influential in Texas.

Hector Garcia, the GI Forum's founder, had traveled the state, studying conditions. He was convinced that separate "Mexican" schools were the cause of poor performance and dropouts. Neglect was symbolized, he said, by an incredible lack even of basic sanitation in the schools in "Little Mexico." Garcia prepared report after report, but little changed.[a]

Lawsuits were filed year after year. Decisions against segregation in Texas and California were followed by a parallel decision in Arizona in 1950. A 1957 decision in Texas went further, declaring separate Anglo and Chicano classrooms illegal.

Although the early cases had documented a history of discrimination and established some legal principles against it, substantive change came slowly. The movement gained important new legal resources in 1968 when the Ford Foundation provided a $2.2 million grant to finance the Mexican-American Legal Defense and Education Fund, modeled on the NAACP Legal Defense Fund. There were now resources for high-quality professional litigation, skillful presentation of issues in the courts of appeals and the Supreme Court, and advocacy in the administrative policymaking processes in Washington.

MALDEF lawyers too found school conditions dismal. Serious segregation was common and little effort was invested in special programs for Spanish-speaking students. In 1970 in the Southwest only about one Chicano student in forty was enrolled in a bilingual program. The schools that had programs often used untrained teachers. Many schools continued to discourage any use of Spanish, even on the playground; a few actually punished children for speaking in their native tongue. Most schools simply did nothing.

In many schools Chicanos were concentrated in the lowest levels on the basis of English-language tests. Texts ignored the Mexican heritage. (Student protest in Los Angeles, San Antonio, and elsewhere dramatized this issue.) Parental involvement was minimal; notices were sent home in English though two-thirds of Chicano families speak Spanish at home.

In the beginning, MALDEF was involved in both desegregation and linguistic cases. During its first year, it sued a small Texas district asking the court to end de jure segregation. The next year it sued the Santa Ana, California, system to stop the use of English-language tests on the basis of which Spanish-speaking children were put in classes for the mentally retarded. MALDEF sued for both desegregation and better school programs in Uvalde, Texas. It also tried to intervene in the important Houston and Dallas cases.[b]

In the early 1970s MALDEF's cases showed growing emphasis on bilingualism and a diminishing concern for desegregation. When black litigants in Waco, Texas, appealed a court decision that equalized resources rather than integrating schools, MALDEF stood aside. During 1971 it filed both kinds of action, asking for bilingual-bicultural education and integration in Austin and concentrating on linguistic and curriculum issues in Portales, New Mexico.[c] When Keyes, the important Denver desegregation case, was argued, MALDEF was not directly involved even though Mexican-Americans were the largest minority group. Only after the Supreme Court decided that integration was required did the organization step in and help shape the remedy.

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[a]Similar patterns of discriminatory testing and placement were uncovered in California, leading to successful litigation against the practice.

[b]Ross v. Eckels, 434 F .2d 1140 (5th Cir. 1970); Tasby v. Estes, 444 F .2d 124 (5th Cir. 1971).

[c]Arvizu v. Waco, 373 F. Supp. 1264 (W.D. Texas 1973); Concerned Parents for Equal Education v. Austin (unpublished opinion); Serna v. Portales Municipal Schools, 499 F .2d 1147 (10th Cir. 1974).

APPENDIX E: Outline of Five Types of Language Programs

Source: González, Josué M. "Coming of Age in Bilingual/Bicultural Education: A Historical Perspective." Inequality in Education. No. 19. Cambridge, Mass.: Center for Law and Education, February, 1975.

Outline of Five Types of Language Programs

The Present State of the Art

While it is true that legislation has not kept apace of developing philosophies of education for a pluralistic society, it should be noted that as these ideologies develop there has been a parallel albeit sluggish effort at implementing more realistic and sound programs.

Some characteristics of the five different types of programs presently in existence illustrate an increasing sophistication in the manner in which both problems and responses are conceptualized.

TYPE A PROGRAMS: ESL/Bilingual (Transitional)

1. Strict remedial/compensatory orientation.
2. Few (if any) bilingual teachers.
3. Bilingual aides relied on for mother-tongue instruction.
4. Use of home language limited to small segments of time.
5. Preponderance of "home made" curriculum materials; some may be prepared by paraprofessional staff and due to lack of direction may lack proper sequencing and/or continuity.
6. Programs have few extra-mural resources available to them for staff training, evaluation and overall capacity-building.
7. Clientele is limited to small percentages of children (usually poor and having other serious problems) who speak no English.
8. Greatest effort is in teaching English and eliminating home-language usage usually by grade 3.
9. Programs are not integrated into the on-going school curriculum. Students often participate on a haphazard "pull-out" basis.
10. Few efforts are made to involve parents in a meaningful partnership with the schools. Home language, culture and child rearing practices are often perceived as detrimental to child's performance in school.

TYPE B PROGRAMS: Bilingual Maintenance

1. Students' fluency in another language is seen as an asset to be maintained and developed.
2. Native English-speaking students are involved in the program only minimally if at all.
3. Recruiting and staff development efforts are made to increase the preparation and efficiency of bilingual staff.
4. Team teaching is often employed to maximize bilingual staff resources.
5. Much attention is given to development of English language skills but use of the home language is continued through the grades to the extent that resources make that possible.
6. Varying degrees of integration of the program into the "regular curriculum" but much of the developmental effort remains dependent on "soft money".
7. Parental involvement is recognized as a potential asset. Attention is given to community resources as sources for curricular content and programmatic direction.
8. The home language is used more extensively and systematically in the teaching of subject content areas and not merely for giving directions or class control.
9. Curriculum development, staff training and evaluation aspects of the program are more comprehensive, better planned and more adequately staffed than in Type A programs.
10. Extra-mural resources are sought out, e.g., college and university personnel, expert consultants, assistance centers, etc. In addition staff may be allowed to visit other programs and participate in conferences and other such

opportunities for learning and interaction.

11. Efforts are made to reach as many non-native English speakers as possible but emphasis continues to be placed on language skill development to the exclusion of other, non-linguistic needs of the child. Differences often occur between programs on their approach to "standard" vs. colloquial usage of the home language for instruction.

TYPE C PROGRAMS: Bilingual/Bicultural (Maintenance)

Similar to Type *B* but in addition:

1. Seeks to integrate "history and culture" of the target group as integral part of curricular content and methodology.
2. An emerging recognition of the role of cultural referents in human development is reflected and plays a key role in staff training and its orientation towards cultural atypicalness. (González, 1974)
3. Extensive staff training in history and culture of the child's ethno-linguistic group. Often, however, much confusion exists as to the *nature of culture* and the procedures for inventorying same to achieve local relevance and proper interpretation of its manifestations.
4. Programs of this type are often found in areas having professional groups with strong ethnic group identification. Consequently, they may also be characterized by strong advocacy, civil rights and community-service aspects.
5. Increasingly, more attention is placed on other aspects of school-child dysfunction. Areas of incompatibility are corollarily identified and incorporated into the program's scope. (Cárdenas, 1974)

TYPE D PROGRAMS: Bilingual/Bicultural (Restorationist)

This type of program is similar to Types *B* and *C* except that ethnic group identification goals reach higher priority levels. In this type of program a strong attempt is made to *restore* to children the option of learning the language and culture of their ancestry even though they themselves may have lost it due to assimilation.

An outstanding example of this approach is seen in the work of the Council for the Development of French in Louisiana (CODOFIL). In a cooperative effort with the French government, *coopérants* are sent to Louisiana, at the expense of the French government, to stimulate instruction in and use of the French language. (Swanson, 1974)

TYPE E PROGRAMS: Culturally Pluralistic

This approach is similar to *D*, but here the emphasis is not restricted to those students from a particular ethno-linguistic group. Instead, *all* students are involved in linguistically and culturally pluralistic schooling. The approach represents a philosophy which is diametrically opposed to that of the "melting pot" ideology. The underlying assumption is that all constituencies of education benefit from an active participation in and appreciation of each others' backgrounds.

This approach is best exemplified at the Multi-Culture Institute, a private school for children ranging in age from three to nine. At this San Francisco school the culture and history of the different groups represented in the school supply the bulk of the curriculum's content. In a recent report (NEA, 1971), the following ethnic groups were represented in the school's population and program: Jewish-American, Chinese-American, Latin-American, Afro-American, Philippino, Welsh, Native-American, Canadian, French, German, Scottish, Irish and Swedish.

The preceding is, admittedly, an oversimplification of current trends. Many programs presently in operation incorporate characteristics of more than one type of approach.

Assessing the Results of Bilingual Legislation

The most cursory examination of bilingual education programs created through legislation reveals certain basic characteristics which are shared by many of these:

- They are for the most part remedial/compensatory in nature, i.e., they presume linguistic and/or cultural *disadvantagedness* or *deficiency* on the part of students with limited English-speaking ability.

- In general, they are *transitional* in their emphasis and regard the learning of English as the ultimate goal. Little emphasis is placed on language *maintenance* and the corollary assumption that cultural and linguistic pluralism is a desirable condition in the society.
- The clientele of the programs are students who *already* possess a language other than English. Monolingual English speakers are seldom involved, thus inhibiting a movement towards multilingualism in the greater society.
- Even those programs which serve linguistic minorities relatively well are often *too restricted* in scope. Their emphasis too often is strictly *linguistic*. Very little is done to attack other areas of incompatibility such as culture, poverty, mobility, societal perceptions and the long-range deleterious effects of social and institutional racism, all of which inhibit successful school performance. (Cárdenas, 1974)
- The expectations placed on such programs are often unrealistically *high*. All too often the performance objectives for a given program in a given year purport that the program will reduce drop-outs or increase achievement to a degree which borders on the ridiculous. As a consequence, the credibility of the concept is impaired when particular programs are unable to reach the lofty ideals of their overeager designers or those of insensitive legislators and bureaucrats who demand more of the programs than they can realistically accomplish.
- Because they are often funded through "soft money" grants, many programs have little if any long-range effects on the schools which host them. This dichotomy between the bilingual program and the "regular curriculum" further exacerbates the former's transitional nature and retards a more comprehensive restructuring of the school as a social institution. The net effect is that little systemic change occurs.
- The greatest proportion of Title VII and state funding goes directly and exclusively to the public schools. Ostensibly, this is in recognition of the need to develop operational programs which provide instructional services *directly* to children. Since minimal funds flow to colleges and universities these institutions have remained unaffected and unresponsive to the need for preparing competent staff to service the schools' programs. Thus, the long-range capacity-building aspect of program development is impeded. Additionally, the gains which accrue from scholarly research at the university level are also reduced.
- Numerous issues and problem areas remain unresolved. Among these are alternative instructional designs, evaluation models, adequate training provisions and curriculum materials as well as related psycholinguistic and sociolinguistic nuances yet to be properly researched.

APPENDIX F: Brown/Lau Migrant Study Survey

SURVEY OBJECTIVES

The initial objective of conducting a national survey for the project was to locate current court cases and/or local settings which would serve to identify potential sites for an on-site review of the interface between desegregation and bilingual education as they affect Hispanic migrant chidren. However, no site was identified which would serve to enhance an understanding of the issues under study within the time frame allotted.

An additional objective of the survey questionnaire was to assess the level of educational organizations' awareness of migrant populations in specific areas as well as to examine the state of current statistics on migrant groups. This assessment was directed to organizations involved on the local level with the Hispanic migrant population or with issues of equal educational opportunity as well as those who could conceivably provide statistical, evaluative and descriptive information.

RESEARCH METHODOLOGY

The research methodology utilized in the survey questionnaire approach involved the following steps:

1) Identification of grass roots organizations who are involved in direct service to migrant populations;
2) Design of cover letter and survey questionnaire;
3) Distribution of survey questionnaire;
4) Follow-up activity, including second round contacts;
5) Compilation of survey responses; and,
6) Analysis of survey results.

The sections which follow detail and discuss the approaches as well as the results of these six aspects of the Brown/Lau Study Survey.

1) Identification

Four categories of organizations which were identified included the following: Office of Equal Educational Opportunity (OEEO); General Assistance Centers (GACs) dealing with the implementation and enforcement of Brown and Lau; Legal Services Organizations serving the migrant populations; and State Directors of the Title I MEPs. Table 1 of this Appendix item summarizes the response rate from types of organizations.

2) Survey Instrument

The cover letter and the survey questionnaire are attached at the end of Appendix F.

3) Distribution

The cover letter and survey questionnaire were mailed to 347 organizations on November 9, 1978. The scheduled response deadline was December 1, 1978; however, responses continued to filter in as late as March, 1979.

4) Follow-up and Second Round Contacts

The follow-up involved several different activities. First, a number of respondents suggested persons who could be instrumental in providing either further statistical information or descriptive information which was solicited in the questionnaire. In response to the suggestions, the project compiled a second round contact list and sent the same questionnaire with a cover letter on January 4, 1979. The number of those contacted as well as the number of respondents can be found in Table 1.

A second follow-up technique utilized was telephone contact with the initial respondents who had indicated familiarity either with a particular court case or some other facet of the study. In addition, several respondents were contacted by telephone if they had misunderstood the survey questionnaire and were determined to be a vital source of information. The input was integrated into the tabulation of survey responses and subsequent analysis.

5) Survey Responses

The survey results are presented in four sections. The first reports on the states covered by the responses as well as the distribution of responses from the five categories of organizations contacted. The second section outlines the statistical information on migrant and seasonal farmworkers elicited in Questions 2, 3, 4, and 5 of the survey questionnaire. The next sections present the responses related to Questions 6 and 7, which were designed to elicit information regarding the identification of migrant/seasonal farmworker children in bilingual/desegregated programs. The final section describes key comments, criticisms and suggestions related to the survey itself as well as to problems the organizations confront in their operation.

a) Distribution of Responses

Table 1 illustrates the percentages and numbers of responses from the five types of organizations who were contacted during the survey.

Table 1. Percentage of Respondents by Type of Organizations Contacted.

Type of Organization	Returned Responses	Total
Type B GAC (Bilingual)	23.5%	100%
Type A GAC (Desegregation)	11.5%	100%
Title I - Migrant Education Programs	32.0%	100%
Legal Services Organizations	13.5%	100%
Second Round Contacts	17.6%	100%
Total	17.0% (n=59)	100% (n=347)

From the 48 states plus Puerto Rico which have MFWs and which could have been covered in the responses, forty-five or 94% were represented. The frequency of responses from the states and Puerto Rico ranged from one to four with the states of Colorado, Florida, North Carolina and Pennsylvania being represented by four questionnaire responses each. The distribution of states covered by the responses thus indicates a good representation of the country.

b) Statistical Information

Table 2 outlines the responses from the survey questionnaire which relate to the estimates of current migrant and seasonal farmworker population in the respondent's regions.

Table 2. Respondents' Estimates of Current Migrant Farmworkers and Migrant/Seasonal Farmworkers in Region.

Approximate Number	Current Migrant Farmworkers	Migrant and Seasonal Population
Less than 1,000	8.5%	1.7%
1,001-5,000	20.4%	5.0%
5,001-20,000	13.5%	13.5%
More than 20,000	10.1%	15.3%
DK/NR	47.5%	64.5%
Total	100.0% (n=59)	100.0% (n=59)

Table 2 reflects the fact that almost two-thirds of the respondents were unaware of the number of migrant/seasonal farmworkers in their area. For those who had an awareness it appears that in the category of current migrant farmworkers the estimates fall within the range of 1,000-20,000 with the heaviest distribution in the 1,000-5,000 range. In the case of the migrant and seasonal population, however, the numbers fall into the 5,000 to over 20,000 range with the distribution slightly more concentrated in the over 20,000 range.

Table 3 illustrates the respondents' estimates of current migrant population and migrant/seasonal population which are Hispanic.

Table 3. Respondents' Estimated Percentages of Current Migrant Population and Migrant/Seasonal Population Which Are Hispanic.

Percent Hispanic	Percentage Distribution of Respondents	
	Current Migrant Population	Migrant and Seasonal Population
Less than 10%	6.8%	3.4%
10%-25%	6.8%	3.4%
26%-50%	6.8%	8.5%
51%-75%	5.0%	5.0%
More than 75%	32.2%	22.0%
DK/NR	42.4%	57.7%
Total	100.0% (n=59)	100.0% (n=59)

The majority were unable to estimate what proportion of the MSFW population is Hispanic. However, for those respondents who did provide percentages, it appears that for the current migrant farmworkers in the area, the majority of the MFW populations are more than 50% Hispanic. The same situation in the case of the migrant and seasonal population is also reflected in Table 3 in which 16 of the 25 respondents possess statistical information indicating a Hispanic majority.

c) Identification of the Children of Migrant and/or Seasonal Farmworkers in Desegregation Plans and/or Bilingual Education Programs

Questions 6 and 7 of the survey questionnaire sought to determine the degree to which the children of migrant/seasonal farmworkers were "identified" or "affected", but not identified in desegregation plans and/or bilingual education programs in the respondent's region. Table 4 outlines the responses to Question 6 which elicited instances where the children were identified as a subgroup for consideration.

Table 4. Respondents' Knowledge of Programs in Which Children of Migrant and/or Seasonal Farmworkers Were Identified as a Subgroup for Consideration?

YES	45.8%
NO	37.2%
DK/NR	17.0%
Total	100.0% (n=59)

Less than a majority, 45.8% of the respondents were aware of educational programs in which the children of the farmworkers were identified as a subgroup for consideration. Table 5 summarizes the types of program specified by respondents.

Table 5. Number of Responses which Specify Examples of Educational Plans, Programs or Actions in which Children of Migrant/Seasonal Farmworkers were Identified as a Subgroup for Consideration by Category.

Category of Examples	Number of Responses
Migrant Education Programs	13
Bilingual Education Programs	12
Desegregation Actions	7
Total	32

It should be noted that unlike the lack of information for the questions related to statistical information on migrant/seasonal farmworkers, the majority of those surveyed possessed information which enabled them to respond to this question.

Table 6 presents the responses to Question 7 which sought to identify examples of educational programs in which migrant/seasonal farmworkers were affected by the plans but not identified as a subgroup.

Table 6. Respondents' Knowledge of Programs in Which Children of Migrant and/or Seasonal Framworkers Were Affected by the Plan But Not Identified as a Subgroup?

YES	22.0%
NO	39.0%
DK/NR	39.0%
Total	100.0% (n=59)

The responses indicate that a significant number of those surveyed noted that there are no educational programs which indirectly affect the children of migrant/seasonal farmworkers' children. The same number, however, were unable to answer the Question.

Table 7 categorizes the types of programs which had an indirect impact on the children, for those who were aware of such programs.

Table 7. Respondents' Examples of Educational Plans, Programs or Actions in Which Children of Migrant and/or Seasonal Farmworkers Were Affected But Not Identified as a Subgroup.

Categories of Examples	Number of Responses
Bilingual Education Programs	7
Desegregation Plans	6
Court Actions Related to Desegregation	2
Plans Created on the Basis of Spanish-Dominant	1
Plans/Programs Serving Children of Settled-Out Migrants	1
Total	17

d) Comments, Criticisms and Suggestions Related to the Survey and Problems Which the Organizations Confront in Situations Related to the Survey.

The notations which the respondents made relating to the questionnaire can be divided into two categories: one, definitional problems inherent in the survey, and two, the lack of information available in the field.

Several respondents criticized the lack of clarity or definitional guidelines associated with the terms "migrant", "seasonal", and "farmworker". This exemplifies the problem of conflicting definitions used by various federal and state agencies.

Another major problem in the survey design was the use of the phrase "regional office" in Question 7. The use of this phrase resulted in several respondents returning the questionnaire unanswered, noting its non-applicability to their office since it was either a state/local organization and not a "regional" office. As a result, AFOP recontacted these organizations in its second round telephone contact to clarify the issue as well as to solicit responses for the questionnaire.

In reference to the lack of information available in the field, several respondents noted that the established statistical mechanisms do not provide accurate figures for the migrant/seasonal population. Therefore, the respondents noted that the figures provided are often impressions or "guestimates". Further, it was noted that services to the children of these populations are limited by a lack of assessment tools with which to determine the students' needs. Also, several respondents noted that additional educational services to migrant children are restricted by their attendance schedule and problems with supplementing rather than supplanting local funds.

6) Analysis

The analysis is conducted in two sections which evaluate the survey in terms of the objectives outlined at the beginning of this Appendix. The first section analyzes the responses in terms of producing court cases which could have potentially identified a local setting for a field site review. The second section analyzes the level of educational organizations' awareness of migrant populations in specific locations as well as the state of current statistics on migrant groups.

Section 1.

Two court cases were identified by the survey which could have resulted in an on-site review. However, these two cases failed to provide a suitable setting. The Castaneda v. Pickard case in Raymondville, Texas involved the segregation of Mexican-American students, one third of whom are migrants. Unfortunately, the judge ruled that segregation did not exist despite a history of de jure segregation and discriminatory tracking, explicit classroom segregation of migrants and the lack of bilingual instruction. As a result of the judge's ruling, the Castaneda case did not provide the desegregated/bilingual setting which was one goal of the study.

The second case was found in Stockton, California, Victor Hernandez v. Stockton Unified School District. The Hernandez case did contain all of the elements which the project sought; however, it was identified too late in the project to permit an on-site evaluation. Telephone interviews were conducted instead and are reviewed in Appendix G as well as the body of the report.

Section 2.

As presented in the survey responses section of this Appendix, the respondents indicated a lack of statistical information regarding the migrant/seasonal farmworker population.

The survey also reflected several points in regard to the level of awareness of the organizations surveyed toward migrant populations in their areas, particularly in terms of bilingual education and desegregation. In instances where children of migrant/seasonal farmworkers were identified in desegregation and/or bilingual education plans (Question 6), the majority of cases involved bilingual or migrant education plans, see Table 5. In the case of those desegregation/bilingual plans having an impact on those chidren who were not identified as a subgroup for consideration, both types of plans were cited equally (Table 7). The issue of desegregation for migrants/seasonal farmworkers in general is being addressed less than bilingual education plans. Although the initiation of desegregation plans in school districts where migrants are present often has an impact on the migrant population, the responses indicate that the migrant population needs to be identified in the development of desegregation plans.

The underlying factor in the widespread statistical deficiencies is the source from which the organizations surveyed derive their information. The desegregation and bilingual General Assistance Centers, which comprised 35% of the survey responses, rely on statistics provided by the Office of Civil Rights' Elementary and Secondary Civil Rights Survey. This information source provides comprehensive statistics on the ethnic/racial origin, language needs and segregation of the public schools' student body; however, it does not identify students by their migrancy status.

On the other hand, the legal services organizations are not generally involved in civil rights activities or educational issues, nor do they receive the information elicited by sources such as the OCR Survey or MSRTS. This results in their inability to identify the ethnic/racial origin, language needs, segregation or migrancy status of public school students in the area.

Title I Migrant Education Programs derive their statistics from enrollment figures of the MSRTS, which does not reflect the ethnic/racial segregation or language needs of the migrant students. Furthermore, the MSRTS does not include the many migrant children who are not enrolled in an MEP.

In short, existing sources of statistics on migrant students provide information with obvious deficiencies, such as ethnic/racial origin statistics without migrancy status indicators, and can be regarded as a major cause for the lack of statistical information to the organizations surveyed. Further discussion of this problem can be found in the FINDINGS and RECOMMENDATIONS of this report.

STATES SERVED
ALA., ARK., CONN., D.C., DEL., FLA., GA., KY., LA., MAINE, MD., MASS., MISS., MO., N.H., N.J., N.Y., N.C., PA., R.I., S.C., TENN., VT., VA., W.VA., E.TEX.

Association of Farmworker Opportunity Programs

W. H. SHIPES, PRESIDENT
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Raleigh, N. C. 27606
(919) 851-7611

LORA LISS, DIRECTOR
418 C. Street, N.E.
Washington, D. C. 20002
(202) 547-6833

November 9, 1978

Dear Director:

The Association of Farmworker Opportunity Programs (AFOP) was recently awarded a National Institute of Education grant for a six-month study of the interface between desegregation and bilingual education as they impact on Hispanic migrant children. This exploratory study will assess the current status of migrant students in such settings and develop policy recommendations.

Enclosed is a short survey form for this project. We would appreciate it if you would reply and return it in the enclosed envelope by December 1, 1978.

Thank you for your cooperation.

Sincerely,

Lora Liss, Ph.D.
Director

Nora Olgyay
Research Associate

HQ
Enclosures

A.F.O.P. Brown/Lau Migrant Study Survey

November 1978

Respondent:_____

Address: _____ Telephone number:_____

_____

_____

1. States covered by this regional office:_____

_____

2. Approximate number of current migrant farmworkers in region:_____

   Don't know_____ Statistical source_____.

3. Percent of current migrant population which is Hispanic:_____

   Don't know_____ Statistical source_____.

4. Approximate number of migrant and seasonal farmworkers in region:_____

   Don't know_____ Statistical source_____.

5. Percent of migrant and seasonal population which is Hispanic:_____

   Don't know_____ Statistical source_____.

6. In your region or area have there been or are there currently any desegregation plans and/or bilingual education programs in which children of migrant and/or seasonal farmworkers were identified as a subgroup for consideration?

   No_____ Yes_____

   If yes, specify:

   Plans/court cases:_____

   _____

   _____

   Location:_____

   Year: _____

(continued)

Plans/decision summary: _____

_____

_____

Contact for further information: _____
(Name)

_____

_____
(Address)

_____
(Tel. #)

7. In your region or area have there been or are there currently any desegregation plans and/or bilingual education programs in which children of migrant and/or seasonal farmworkers were impacted by the plan but <u>not identified</u> as a subgroup.

_____ No _____ Yes

If yes, specify:

Plans/court cases: _____

_____

_____

Location: _____

Year: _____

Plans/decision summary: _____

_____

_____

Contact for further information: _____
(Name)

_____

_____
(Address)

_____
(Tel. #)

8. Comments/Suggestions: _____

_____

_____

APPENDIX G: Personal Interviews

The three primary methodologies used by the AFOP project were personal interviews, a national survey (Appendix F) and a literature search (Appendix H). As with the other methodologies, the interviews failed to elicit a site or information which would bear directly on an adequate assessment of the interface between desegregation and bilingual education as it affects Hispanic migrant children. However, valuable information about the educational status of migrant children was gained.

Sixty-four interviews were completed, representing staff from 31 organizations. The interviews were conducted either in person or by telephone. The interviewees were identified for contact through recommendations made by other interviewees, survey respondents and AFOP staff.

The initial focus of the interviews was the location of a site in which the Hispanic migrant student population is being served by a desegregated and bilingual educational program. No location was identified for an on-site review.

Only two sites were located which fit the criteria for an on-site review: Wilmington, Delaware and Stockton, California. Unfortunately, these two sites were located too late in the project to allow for an on-site review. As a consequence, the project's reviews of the two school systems were conducted through telephone interviews. In both cases the identification of migrant students does not expand beyond the existing MEP, which the local school officials kept intact throughout the desegregation process. However, as outlined in the subsection "Limitations of the Migrant Education Programs" of FINDING 3, maintenance of the local MEP does not assure that all migrant students are identified and served. Further, neither the MEP nor migrant students were mentioned specifically in either the Wilmington or Stockton desegregation orders.

The responses to the site search indicated that the project's desire to locate a desegregated and bilingual setting affecting Hispanic migrant children is two steps ahead of the realities: bilingual instruction simply is not offered to the vast majority of eligible migrants. As a result, the on-site review did not materialize and the previous focus of the interviews gave way to a focus on the identification of MFWs in a bilingual or desegregated setting.

Once again, the interviews revealed that the status of the migrant student is unknown outside the MEP. The general assumption is that the MFWs have bilingual educational needs which are being met through local programs. The assumption that migrant students' language needs are met is inaccurate. As outlined in FINDINGS 2 and 3, the irregular school schedule of migrant students precludes their participation in local bilingual programs while the MEP regulations prohibit the use of MEP funds to supplant the local school responsibilities, such as appropriate language instruction.

As a result of the responses to the earlier foci, the project interviews in the final phase focused on detailing any cases related to

assessing the current status of Hispanic migrant students. These cases are referred to throughout the body of the project report and include the Wilmington, Delaware and Stockton, California cases in addition to the following sites and issues:

- El Centro, California: The tracking of MFWs into a school program designed for behavioral problems.
- Plyler, Texas: Charging the children of undocumented workers tuition for a public school education.
- Lake County, Florida: Penalizing migrant students by denying them academic credit for work completed in other schools and denying them an opportunity to make-up the credit.
- Raymondville, Texas: Failure by the court to make a finding of illegal segregation of Mexican-American students, one-third of whom are migrants, despite a long history of de jure dual school systems including discriminatory tracking, explicit classroom segregation of migrant students until at least 1976, and the failure to provide appropriate bilingual instruction
- Burley, Idaho: Despite a 1976 desegregation plan which included provisions for bilingual instruction, the school system still fails to provide adequate language instruction or stem discriminatory treatment toward the Hispanic population which includes Hispanic migrant children.
- Milwaukee, Wisconsin: Recent example of a court's decision not to define Hispanics as an identifiable minority, but, instead to treat them as "non-Black" in school desegregation plans. Hispanic intervention in the court case was denied.

In short, the interviews failed to elicit a site or information bearing directly on the effects of the interface between desegregation and bilingual education for Hispanic migrant children. However, the interviews did identify issues relevant to the equal educational opportunity needs of Hispanic migrants and reiterated the need to define, clarify and protect them.

ORGANIZATIONS REPRESENTED IN AFOP INTERVIEWS

ASPIRA: Reston, VA

Association of Farmworker Opportunity Programs: Raleigh, NC

California Rural Legal Services: El Centro, San Francisco and Stockton, CA

Center for Law and Education: Boston, MA

Center for Applied Linguistics: Arlington, VA

Colorado Migrant Council: Wheatridge, CO

D.A. Lewis, Inc.: Clinton, MD

Education Commission of the States: Washington, DC

Federal Education Project (of Lawyers' Committee for Civil Rights Under Law): DC

Florida Rural Legal Services: Homestead, Immokalee and Winter Haven, FL

Florida Technical Institute: Orlando, FL

HEW, Office of Civil Rights (OCR: Title VI): DC (Federal) and PA

HEW, Office of Equal Educational Opportunity (OEEO: Title IV): DE, DC (Federal), FL and MN

HEW, Title I MEP: AZ, DE, DC (Federal), FL, NC and TX

Individuals, Educators: Sacramento, CA; DC; Austin, Brownsville and Harlingen, TX

InterAmerica Research Associates: Rosslyn, VA

Intercultural Development Research Association: San Antonio, TX

Interstate Migrant Education Project: Denver, CO

Mexican-American Legal Defense and Educational Fund: San Francisco, CA; Washington, DC; and San Antonio, TX

Migrant Education Coalition: DC

Migrant Legal Action Program: DC

National Association of Farmworker Organizations: DC

National Center for Youth Law: San Francisco, CA

National Child Labor Committee: New York, NY

National Clearinghouse on Bilingual Education: Rosslyn, VA

National Committee on the Education of Migrant Children: DC

National Council of La Raza: DC

National Education Association: DC

Northwest Rural Opportunities: Sunny Side, WA

Rural New York Farmworker Opportunities, Inc.: Rochester, NY

Texas Rural Legal Services: Harlingen, TX

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